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Federal Register

Monday
June 10, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Chicago, IL, New York, NY, and Washington, DC, see announcement on the inside cover of this issue.

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Environmental Protection Agency

Anchorage Grounds
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Environmental Protection Agency

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Conservation and Renewable Energy Office

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Loan Programs—Agriculture
Farmers Home Administration

Marine Safety
Coast Guard

Marketing Agreements
Agricultural Marketing Service

Medicare
Health Care Financing Administration

Milk Marketing Orders
Agricultural Marketing Service

Probation and Parole
Parole Commission

Trade Practices
Federal Trade Commission

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: July 8 and 9; at 9 am (identical sessions)

WHERE: Room 1654, Insurance Exchange Building, 175 W. Jackson Blvd., Chicago, IL.

RESERVATIONS: Call the Chicago Federal Information Center, 312-353-4242.

NEW YORK, NY

WHEN: July 9 and 10; at 9 am (identical sessions)

WHERE: 2T Conference Room, Second Floor, Veterans Administration Building, 252 Seventh Avenue (between W. 24th and W. 25th Streets), New York, NY.

RESERVATIONS: Call Arlene Shapiro or Steve Colon, New York Federal Information Center, 212-264-4810.

WASHINGTON, DC

WHEN: September (two dates to be announced later).

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 84-349]

7 CFR Part 319

Exotic Bee Diseases and Parasites

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document establishes regulations imposing restrictions on the importation into the United States of the following articles from any foreign country of locality other than Canada:

(a) Live bees, other than honeybees of the genus *Apis*, in any life stage;

(b) Dead bees of any genus;

(c) Used bee boards, hives, nests and nesting material;

(d) Used beekeeping equipment, e.g., smokers, hive tools, gloves or other clothing, and shipping containers;

(e) Beeswax, unless it has been liquefied;

(f) Pollen for bee feed; and

(g) Honey for bee feed.

These regulations are necessary to prevent the introduction into the United States of exotic bee diseases and parasites and thereby to prevent damage to crops and other plants that depend upon bees for pollination.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Philip J. Lima, Staff Specialist, Biological Assessment Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 628, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6603.

SUPPLEMENTARY INFORMATION:

Background

A document was published in the **Federal Register** on May 14, 1984 (see 49 FR 20293–20299), which proposed to restrict the importation into the United States of the following articles from any foreign country or locality other than Canada, in order to prevent the introduction and establishment of exotic bee diseases and parasites:

(a) Live bees, other than honeybees of the genus *Apis*, in any life stage;

(b) Dead bees of any genus;

(c) Used bee boards, hives, nests and nesting material;

(d) Used beekeeping equipment, e.g., smokers, hive tools, gloves or other clothing, and shipping containers;

(e) Beeswax, unless it has been liquefied;

(f) Pollen for bee feed; and

(g) Honey for bee feed.

Under the proposed regulations, restricted articles could be imported if requirements concerning permits, inspections and treatments, marking and shipping, arrival notification, costs and charges, and ports of entry were met, or if imported by the U.S. Department of Agriculture for experimental or scientific purposes.

Comments were solicited for 60 days. Nine comments were received on the proposed regulations. Five comments were in support of the proposal and four comments recommended changes. The recommended changes are discussed below. The provisions of the proposed regulations have been adopted in the final rule without change based on the reasons set forth in the document of May 14, 1984 and the reasons discussed below.

One commenter recommended that § 319.76–4(a) be amended to provide that shipments of imported live bees be kept small so that each live bee could be inspected. The commenter asserted that the provision in § 319.76–4(a) concerning inspection of a statistically designed representative sample of imported bees would not be sufficient to detect exotic bee diseases or parasites that might be present in the shipment.

No changes in the proposal have been made based on this comment. Specifically, the Department has determined from experience that it is not necessary to inspect each bee from a shipment of imported live bees to determine whether the shipment of bees is infested with exotic bee diseases or parasites, and that a representative sample would be adequate to reveal an infestation of exotic bee diseases or parasites in the shipment of bees.

Another commenter recommended that the Department approve an alternative to the ethylene oxide treatment proposed in § 319.76–4(c)(1) so that there would be a treatment available for the restricted articles listed in § 319.76–4(c)(1) in the event that the Environmental Protection Agency cancels the registration on ethylene oxide.

No changes have been made based on this comment. The Department is not aware of any other method of treating dead bees, used bee boards, hives, nests, or nesting material, used beekeeping equipment, and pollen for bee feed that could feasibly be used for destroying any exotic bee diseases or parasites that may be present in the shipment.

Another commenter recommended that entomologists be allowed to import dead bees of any genus, without a permit, if immersed in alcohol and imported for the purpose of collecting specimens.

No changes have been made based on this comment. The permit requirement is necessary regardless of who the importer is. It allows the Department to determine whether the intended importation is permitted under the regulations and to prevent the arrival of restricted articles under conditions that could cause unnecessary risk of introduction into the United States of exotic bee diseases and parasites.

Finally, one commenter questioned the safety of allowing restricted articles to be imported by the Department under an experimental or scientific permit and recommended that such research be performed outside the United States so as to avoid the possibility that exotic bee diseases or parasites will become established in the United States.

No changes have been made based on this comment. The Department has determined that the safeguards and procedures established for those articles allowed to be imported pursuant to a scientific or experimental permit (see § 319.76(c) in the text portion of this document) are adequate to protect against the establishment or spread of exotic bee diseases and parasites that may accompany such articles.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause 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 rule imposes restrictions on the importation into the United States of the following articles from any foreign country or locality other than Canada:

(a) Live bees, other than honeybees of the genus *Apis*, in any life state;

(b) Dead bees of any genus;

(c) Used bee boards, hives, nests and nesting material;

(d) Used beekeeping equipment, e.g., smokers, hive tools, gloves or other clothing, and shipping containers;

(e) Beeswax, unless it has been liquefied;

(f) Pollen for bee feed; and

(g) Honey for bee feed.

Consideration was given concerning whether: (1) To allow the importation of such articles without the imposition of the restrictions, (2) to impose the restrictions on the importation of such articles from all foreign countries and localities, including Canada, or (3) to impose the restrictions on the importation of such articles from all foreign counties and localities except Canada.

Alternative (1) has not been adopted because the unrestricted entry of such articles would present a significant risk of introducing exotic bee diseases and parasites into the United States. Alternative (2) has not been adopted because exotic bee diseases and parasites do not occur in Canda and because Canada has in operation precautions adequate to prevent the introduction of exotic bee diseases and parasites into Canada from other countries and localities. Alternative (3) has been adpoted because the restricted articles can be imported under the provisions of the rule without a significant risk of introducing exotic bee diseases and parasites into the United States.

This action would not have a significant economic effect since there is little, if any, importation into the United States of articles designated as restricted articles. Further, it appears that there is no feasible alternative to consider in compliance with the requirement that agencies choose the alternative that maximizes net benefits to society at the lowest net cost.

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

Paperwork Reduction Act

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the information collection provisions included in this rule have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0579–0072.

List of Subjects in 7 CFR Part 319

Bees, Honey, Imports, Transportation.

Under the circumstances set forth above, 7 CFR Part 319 is amended by adding "Subpart-Exotic Bee Diseases and Parasites" to read as follows:

PART 319—FOREIGN QUARANTINE NOTICES

Subpart—Exotic Bee Diseases and Parasites

Sec.

319.76 Restrictions on importation of restricted articles; disposal of articles refused importation.
319.76–1 Definitions.
319.76–2 Restricted articles.
319.76–3 Permits.
319.76–4 Inspections and treatments.
319.76–5 Marking and shipping.
319.76–6 Arrival notification.
319.76–7 Costs and charges.
319.76–8 Ports of entry.

Authority: Secs. 105, 106, and 107; 71 Stat. 32–34 (7 U.S.C. 150dd, 150ee, 150ff); 7 CFR 2.17, 2.51, and 371.2.

Subpart—Exotic Bee Diseases and Parasites

§ 319.76 Restrictions on importation of restricted articles; disposal of articles refused importation.

(a) No person may import any restricted article unless in conformity with all of the restrictions in this subpart.

(b) Any article refused importation for noncompliance with the requirements of this subpart shall be promptly removed from the United States or abandoned by the importer, and pending such action shall be subject to the immediate application of such safeguards against escape of plant pests as the inspector determines necessary to prevent the introduction into the United States of plant pests. If such article is not promptly safeguarded, removed from the United States, or abandoned for destruction by the importer, it may be seized, destroyed, or otherwise disposed of in accordance with sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

(c) A restricted article may be imported without complying with other provisions under this subpart if:

(1) Imported by the U.S. Department of Agriculture for experimental or scientific purposes;

(2) Imported at the Plant Germplasm Quarantine Center, Building 320, Beltsville Agricultural Research Center East, Beltsville MD 20705, or at a port of entry designated by an asterisk in § 319.37–14(b);

(3) Imported pursuant to a departmental permit issued for such article and kept on file at the port of entry;

(4) Imported under conditions specified on the departmental permit and found by the Deputy Administrator to be adequate to prevent the introduction into the United States of plant pests, i.e., conditions of treatment, processing, shipment, disposal; and

(5) Imported with a departmental tag or label securely attached to the outside of the container or securely attached to the article itself if not in a container, and with such tag or label bearing the name of the person to whom the permit is issued.

§ 319.76–1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural, and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed respectively, to mean:

Bee. Any member of the superfamily Apoidea.

Deputy Administrator. The Deputy Administrator of the Animal and Plant Health Inspector Service for Plant Protection and Quarantine, U.S. Department of Agriculture, or any other officer or employee of the Department to whom authority to act in his or her stead has been or may hereafter be delegated.

Exotic bee diseases. Bee diseases of foreign origin, including but not limited to *Aspergillus* spp., *Bacillus* spp., *Entomophthora* spp., *Beauveria* spp., *Cordyceps* spp., and *Saccharomyces* spp.

Exotic bee parasites. Bee parasites of foreign origin, including but not limited to *Coelioxys* spp. and *Chrysis* spp., *Varroa jacobsoni, Euvarroa sinhai,*

Tropilaelaps clareae, and *Acarapis woodi*.

Import (importation, imported). To import or move into the United States.

Inspector. Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person authorized by the Deputy Administrator in accordance with law to enforce the provisions of this subpart.

Person. Any individual, corporation, company, society, association, or any other organized group.

Plant pest. The egg, pupal, and larval stages as well as any other living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, or other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants.

Plant Protection and Quarantine. The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Federal Plant Pest Act and related legislation and regulations promulgated thereunder.

Secretary. The Secretary of Agriculture, or any other officer or employee of the Department of Agriculture to whom authority to act in his or her stead has been or may hereafter be delegated.

United States. The States, District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

§ 319.76-2 Restricted articles.

The following articles from any country or locality other than Canada are restricted articles:

(a) Live bees, other than honeybees of the genus *Apis*, in any life stage;[1]

(b) Dead bees of any genus;

(c) Used bee boards, hives, nests, and nesting material;

(d) Used beekeeping equipment, e.g. smokers, hive tools, gloves or other clothing, and shipping containers;

(e) Beeswax, unless it has been liquefied;

(f) Pollen for bee feed; and

(g) Honey for bee feed.

§ 319.76-3 Permits.

(a) A restricted article may be imported only after issuance of a written permit by Plant Protection and Quarantine.

(b) An application for a written permit must be submitted to the Biological Assessment Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, MD 20782, and should be submitted at least 30 days prior to arrival of the article at the United States port of entry. The completed application does not have to be on any particular form but must indicate that it is an application for a written permit, and include the following information:

(1) Name, address, and telephone number of the importer;

(2) Approximate quantity and kinds of articles intended to be imported;

(3) Country or locality of origin;

(4) Intended United States port of entry;

(5) Means of transportation; and

(6) Expected date of arrival.

(c) After receipt and review of the application by Plant Protection and Quarantine, a written permit indicating the applicable conditions in this subpart for importation shall be issued for the importation of the articles specified in the application if such articles appear to be eligible to be imported. Even though a written permit has been issued for the importation of an article, it may be moved into the United States from the port of entry only if all requirements of this subpart are met and only if an inspector at the port of entry does not determine that emergency measures pursuant to section 105 of the Federal Plant Pest Act 7 U.S.C. 150dd] are necessary with respect to such article.[2]

(d) Any permit which has been issued may be withdrawn by an inspector or the Deputy Administrator if he or she determines that the permit holder has not complied with any condition for the use of the permit. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within 20 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal in writing, stating the reasons for the decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve the conflict.

(Approved by the Office of Management and Budget under control number 0579-0072)

§ 319.76-4 Inspections and treatments.

(a) Live bees, other than honeybees of the genus *Apis*, in any life stage shall be microscopically inspected by an inspector for exotic bee diseases and parasites, and any bee disease or parasite found will be physically removed by an inspector or destroyed by an inspector by treatment with a pesticide registered by the Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135 *et seq.*), for use on bees and used in accordance with directions on the label in connection with the registration under the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. The inspection may include dissection of a statistically designed representative sample of the bees, if deemed necessary by the inspector for determinations concerning the absence or presence of bee diseases or parasites. If the inspector determines that a disease or parasite cannot be removed or otherwise destroyed, the bees shall be killed by immersion in a solution containing at least 70% alcohol.

(b) Any dead bees for research at the time of importation must be in a solution containing at least 70% alcohol, or must be in a dry, sealed container. If in a dry, sealed container, the dead bees shall be kept in the container under the control of an inspector at the port of entry for 7 days.

(c) Any restricted article not covered by paragraph (a) or (b) of this section, prior to movement into the United States from the port of entry, shall be treated

[1] The Honeybee Act, as amended (7 U.S.C. 281 *et seq.*), among other things, prohibits the importation into the United States of any live honeybees of the genus *Apis* in any life stage except as allowed under provisions of that Act and regulations in 7 CFR Part 322.

[2] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides, among other things, that the Secretary of Agriculture may, whenever he or she deems it necessary as a emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or dispose of, in such manner as he or she deems appropriate, subject to provisions in section 105 (b) and (c) of the Act (7 U.S.C. 150dd (b) and (c)), any product or article, including any article subject to this subpart, which is moving into or through the United States, and which he or she has reason to believe was infested or infected by or contains any plant pest at the time of such movement. Sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff) also authorize emergency measures against articles which are not in compliance with the provisions of this subpart.

under the supervision of an inspector as follows:

(1) Dead bees; used bee boards, hives, nests, or nesting material; used beekeeping equipment; and pollen for bee feed shall be treated in an airtight chamber with 450 mg of ethylene oxide per liter of chamber space at a temperature of at least 100°F (37.78°C) for 8 hours.

(2) Beeswax that has not been liquefied shall be melted.

(3) Honey for bee feed shall be heated to 212°F (100°C) for 30 minutes.

§ 319.76–5 Marking and shipping.

(a) Any restricted article for importation by means other than mail shall at the time of importation bear on the outer container (if in a container) or on the article (if not in a container) the following information:

(1) General nature and quantity of the contents,

(2) Country or locality of origin,

(3) Name and address of shipper, owner, or person shipping or forwarding the article,

(4) Name and address of consignee, and

(5) Identifying shipper's mark and number.

(b) Any restriction article for importation by mail must be addressed and mailed to Plant Protection and Quarantine at a port of entry designated by an asterisk in § 319.37–14(b) of this Part; must be accompanied by a separate sheet of paper within the package bearing the name, address, and telephone number of the intended recipient; and must bear on the outer container the following information:

(1) General nature and quantity of the contents,

(2) Country or locality of origin, and

(3) Name and address of shipper, owner, or person shipping or forwarding the article.

(c) Any restricted article must be accompanied at the time of importation by an invoice or packing list indicating the contents of the shipment.

(d) Live bees in any life stage, other than honeybees of the genus *Apis*, may be imported only in loose cells within noncrushable (hard plastic, wood, or metal), insect-proof containers.

(Approved by the Office of Management and Budget under control number 0579–0072)

§ 319.76–6 Arrival notification.

Promptly upon arrival of any restricted article at a port of entry, except for mail shipments, the importer must notify Plant Protection and Quarantine of the arrival by such means as a manifest, customs entry document, commercial invoice, waybill, a broker's document, or a notice form provided for that purpose.

(Approved by the Office of Management and Budget under control number 0579–0049)

§ 319.76–7 Costs and charges.

The services of the inspector during regularly assigned hours of duty and at the usual places of duty shall be furnished without cost to the importer.[3] The importer shall be responsible for arrangements for treatments required under § 319.76–4. Any treatment required under § 319.76–4 for a restricted article, other than for treatments of live bees in any life stage or for holding dead bees in dry, sealed containers, shall be performed at the port of entry by a nonfederal establishment at the importer's expense, and shall be performed under the direction of an inspector. Plant Protection and Quarantine will not be responsible for any costs or charges, other than those indicated in this section.

§ 319.76–8 Ports of entry.

(a) Any restricted article, other than bees in any life stage, imported by means other than mail may be imported only at a port of entry listed in § 319.37–14(b) of this Part.

(b) Any restricted article, other than bees in any life stage, imported by mail may be imported only at a port of entry designated by an asterisk in § 319.37–14(b) of this Part.

(c) Live bees in any life stage, other than honeybees of the genus *Apis*, may be imported at the Bee Biology and Systematics Laboratory, USDA, ARS, 261 NRB–UMC 53, Utah State University, Logan, Utah 84322; or at the Plant Germplasm Quarantine Center, Building 320, Beltsville Agricultural Research Center East, Beltsville, MD 20705.

Done at Washington, D.C., this 5th day of June 1985.

H.L. Ford,

Deputy Administrator, Plant Protection and Quarantine Animal and Plant Health Inspection Service.

[FR Doc. 85–13833 Filed 6–7–85; 8:45 am]

BILLING CODE 3410–34–M

[3] Provisions relating to costs for other services of an inspector are contained in 7 CFR Part 354.

Agricultural Marketing Service

7 CFR Part 981

Handling of Almonds Grown in California; Change in the Definition of "Inedible Kernel" Relating to Quality Control

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule modifies the definition of "inedible kernel" under the Federal marketing order for California almonds by deleting the reference to internal discoloration. Last fall, that definition was changed so almond kernels with internal discoloration would be inedible kernels and have to be disposed of in non-normal outlets such as almond oil and animal feed. However, the industry found that almond processing equipment is not able to separate internally discolored almonds from sound almonds. Without a method of separation, internal discoloration cannot be used as a factor in classing inedible almond kernels. The Almond Board of California recommended this action. The Board works with the Department in administering the almond order.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

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.

It is found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rulemaking and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (50 U.S.C. 553) in that: (1) No practical way of removing internally discolored almonds from lots of otherwise sound almond kernels currently exists within the industry; (2) the inclusion of internal discoloration as one of the factors in

classing inedible kernels places an unreasonable processing burden on handlers; and (3) no useful purpose would be served by providing an opportunity for public input or by delaying the effective date 30 days after publication in the **Federal Register**.

This final rule amends § 981.408 of Subpart—Administrative Rules and Regulations (7 CFR 981.401–981.474) by deleting the reference to internal discoloration in the definition of inedible kernels. Section 981.408 is issued pursuant to § 981.8 of the marketing agreement and Order No. 981 (7 CFR 981), both as amended, regulating the handling of almonds grown in California and hereinafter referred to collectively as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action taken herein is based on a recommendation of the Almond Board of California, hereinafter referred to as the "Board," which works with USDA in administering the order.

The term "inedible kernel" is used in connection with the order's quality control provisions. The purpose of these provisions is to separate "inedible kernels" from "edible kernels", and requires the disposal of the inedible kernels in non-normal outlets such as almond oil and animal feed.

Pursuant to § 981.8, the definition of "inedible kernel" was modified last fall (49 FR 40788) to mean a kernel, piece, or particle of almond kernel with any defect scored as serious damage, or damage due to mold, gum, shrivel, or brown spot, as defined in the United States Standards for Shelled Almonds, or which has embedded dirt or other foreign material not easily removed by washing or has internal discoloration. The words "or has internal discoloration" were added to the definition of inedible kernel to improve the quality of almond kernels moving into normal markets.

Discoloration is a darkening of an almond kernel's interior and usually results when almond lots have excessive moisture or are subjected to high temperatures during storage or drying. The interior of an almond kernel normally is cream-colored, whereas a discolored kernel is yellowish-brown or, in serious cases, brown. Discolored almonds usually have objectionable off-flavors. Hence, discolored almonds are unsuitable for normal market uses and should more appropriately be classed as "inedible almonds" and disposed of in outlets such as almond oil and animal feed.

However, the industry found that current almond processing equipment is not capable of separating discolored almond kernels from otherwise sound almonds. Because no practical means of separation currently exists, internal discoloration cannot be used as a factor in classing inedible kernels, and the Board recommended deletion of the reference to internal discoloration in § 981.408.

After consideration of all relevant matter presented, including the Board's recommendation, and other available information, it is further found that to change Subpart—Administrative Rules and Regulations (7 CFR 981.401–981.474) by amending § 981.408 will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds, California.

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 49 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 981.408 [Amended]

2. Section 981.408 is amended by removing the words "or has internal discoloration".

Dated: June 5, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85–13913 Filed 6–7–85; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 981

Handling of Almonds Grown in California; Revision of Salable and Reserve Percentages for the 1984–85 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: FINAL RULE.

SUMMARY: This action revises the salable and reserve percentages for marketable California almonds received by handlers during the 1984–85 crop year, which began July 1, 1984. The salable percentage is increased from 90 percent to 95 percent, and the reserve percentage is correspondingly decreased from 10 percent to 5 percent. This action is being taken under the marketing order for almonds grown in California and is designed to make more 1984 crop almonds available for immediate shipment, thereby promoting orderly marketing.

EFFECTIVE DATES: July 1, 1984 through June 30, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

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.

It has been determined that a situation exists which warrants publication of this final rule without prior opportunity for public comment. This action relaxes restrictions on handlers by allowing them to ship additional almonds to salable outlets and should be taken promptly to ensure a sufficient quantity of almonds for normal domestic and export needs and to maintain the current momentum of sales. Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice of public rulemaking and other public procedures with respect to this final action are impracticable and contrary to the public interest.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The marketing order for California almonds requires that revised salable, reserve, and export percentages established for a particular crop year shall apply to all marketable California almonds received by handlers from the beginning of that year. The 1984–85 crop year began July 1, 1984.

The authority to establish salable and reserve percentages is pursuant to § 981.47 of the marketing agreement and Order No. 981, both as amended (7 CFR 981), regulating the handling of almonds grown in California and hereinafter referred to collectively as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Section 981.48 of the order provides for as increase in the salable percentage by the Secretary upon findings of fact that the quantity of salable almonds is not sufficient to satisfy trade demand and desirable carryover requirements for the crop year.

On October 1, 1984, a final rule was published in the **Federal Register** (49 FR 38530) establishing salable, reserve, and export percentages of 75 percent, 25 percent, and 0 percent, respectively, for

the 1984–85 crop year. That action was based on a recommendation of the Almond Board of California made at a meeting held on July 25, 1984. The Board works with USDA in administering the order.

On February 26, 1985, the Board met to review the salable and reserve percentages established for the 1984–85 crop year and the supply and demand estimates from which those percentages were derived. Pursuant to § 981.48 of the order, the Board recommended an increase in the salable percentage to 79 percent and a corresponding decrease in the reserve percentage to 21 percent. A final rule establishing those revised percentages was published in the **Federal Register** on March 28, 1985 [50 FR 12219].

On March 29, 1985, the Board met again to review 1984–85 salable and reserve percentages and recommended an increase in the salable percentage to 90 percent and a corresponding decrease in the reserve percentage to 10 percent. A final rule establishing those revised percentages was published in the **Federal Register** on May 7, 1985 [50 FR 19161].

On May 6, 1985, the Board met again to review 1984–85 salable and reserve percentages and recommended an increase in the salable percentage to 95 percent and a corresponding decrease in the reserve percentage to 5 percent. The momentum in sales the industry has been experiencing since early 1985 is continuing and some handlers are in a sold-out position on the salable portion of their 1984 crop receipts in spite of the two recent changes in the percentages. In recognition of this to ensure that ample supplies of almonds are available to meet trade demand and carryover requirements, the Board recommended a further relaxation in the percentages. The Board was also cognizant that many growers still are facing a cash flow problem in preparing for 1985 crop production activities. Customarily, handlers do not pay growers for reserve almonds until such almonds are released for sale to normal markets or until alternate outlets have been designated. Growers normally receive a higher price for almonds designated for normal outlets than for almonds designated for alternate outlets.

In arriving at its recommendation, the Board noted that the current estimate of 1984 crop production is up 4.7 million pounds from its March 29, 1985, estimate to 586.1 million pounds. The Board decreased its estimate of loss and exempt almonds by 5.7 million pounds to 23.4 million pounds. Thus, marketable supply is increased by 10.4 million pounds to 562.7 million pounds. The Board also decreased its estimate of domestic trade shipments by 10.0 million pounds to 130.0 million pounds, resulting in a decrease in total trade shipments from 390.0 million pounds to 380.0 million pounds. Finally, the Board increased the quantity of almonds deemed desirable to be carried out on June 30, 1985, from 198.9 million pounds to 246.4 million pounds.

The estimates used by the Board in making its May 6, 1985, recommendation to revise the salable and reserve percentages are tabulated below. The Board's July 25, 1984, February 26, 1985, and March 29, 1985, estimates are shown as a basis of comparison.

MARKETING POLICY ESTIMATES—1984 CROP

(Kernel weight basis; million pounds)

	Initial estimate (July 25, 1984)	First revised estimate (Feb. 26, 1985)	Second revised estimate (Mar. 29, 1985)	Third revised estimate (May 6, 1985)
Production:				
1. 1984 crop	520.0	581.4	581.4	586.1
2. Loss and exempt—5 pct	26.0	29.1	29.1	23.4
3. Marketable supply	494.0	552.3	552.3	562.7
Trade shipments:				
4. Domestic	150.0	140.0	140.0	130.0
5. Export	230.0	250.0	250.0	250.0
6. Total	380.0	390.0	390.0	380.0
Inventory adjustment:				
7. Carry in July 1, 1984	91.8	91.8	91.8	91.8
8. Estimated carryover June 30, 1985	82.3	138.1	198.9	246.4
9. Adjustment	(9.5)	46.3	107.1	154.6
Salable/reserve:				
10. Salable supply (item 6 plus item 9)	370.5	436.3	497.1	534.6
11. Reserve supply (item 3 minus item 10)	123.5	116.0	55.2	28.1
12. Salable percentage (item 10 ÷ item 3 × 100) (percent)	75	79	90	95
13. Reserve percentage (100 percent minus item 12) (percent)	25	21	10	5

The reserve of 5 percent (28.1 million pounds) must be withheld by handlers from normal domestic and export outlets to meet their reserve obligations. The Board has allocated these almonds for use chiefly in the almond butter and school lunch projects begun during the 1982–83 crop year. These long-term projects are a means for the industry to develop new markets for almonds in view of larger crops. Allocated reserve almonds also could be disposed of in other noncompetitive outlets as specified in the order or approved by the Board.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board, and other available information, it is further found that the revision of the salable and reserve percentages, as hereinafter set forth, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds; and California.

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

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

2. Section 981.233 is revised to read as follows:

[The following provisions will not appear in the Code of Federal Regulations].

§ 981.233 Salable, reserve, and export percentages for almonds during the crop year beginning July 1, 1984.

The salable, reserve, and export percentages during the crop year beginning July 1, 1984, shall be 95, 5, and 0 percent, respectively.

Dated: June 5, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85–13914 Filed 6–7–85; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1106

Milk in the Southwest Plains Marketing Area Temporary Revision of a Certain Provision of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rule.

SUMMARY: This action reduces temporarily the pooling standard for plants operated by cooperative associations under the Southwest Plains Federal milk order. For the months of May through August 1985, the percentage of milk marketed by cooperative associations that must be physically received at pool distributing plants during the month in order for plants operated by cooperative associations to be pooled is reduced from 50 to 40 percent. The action was requested by Mid-America Dairymen, Inc., a cooperative association that operates plants and represents producers who supply the market, in order to prevent uneconomic movements of milk.

Notice of this action was published in the **Federal Register** and interested parties were given the opportunity to submit comments on the proposed action. A cooperative association

supported the proposed action and a dairy farmer opposed a lowering of the pooling standard.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Proposed Temporary Revision of Rule: Issued May 20, 1985; published May 23, 1985 (50 FR 21268).

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. Such action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1106.7(d) of the Southwest Plains milk order.

Notice of proposed rulemaking was published in the **Federal Register** (50 FR 21268) concerning a proposed decrease in the percentage of milk marketed by cooperative associations that must be physically received at pool distributing plants in order for plants operated by cooperative associations to be pooled under the order for the months of May through August 1985. Interested parties were given the opportunity to comment on the proposal by submitting written data, views, and arguments. The action was supported by a cooperative association while one producer submitted views in opposition to the action.

Statement of Consideration

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, data, views and arguments filed thereon, and other available information, it is hereby found and determined for the months of May through August 1985 the delivery percentage of 50 percent applicable to milk marketed by cooperative associations as set forth in § 1106.7(c) should be decreased to 40 percent.

Pursuant to § 1106.7(d) of the Southwest Plains milk order, the Director of the Dairy Division may increase or decrease the delivery percentage by up to 10 percentage points in order to obtain needed shipments for the market or to prevent uneconomic shipments of milk to distributing plants.

Mid-America Dairymen, Inc. (Mid-Am), a cooperative association which represents producers supplying the Southwest Plains market, requested this temporary reduction of 10 percentage points in the quantity of milk that must be physically received at pool distributing plants. Mid-Am states that for May through August 1985 the order would require a greater proportion of milk to be physically received at distributing plants than is necessary to meet the fluid, or bottling, requirements of the market. Thus, absent a lowering of the delivery percentage, Mid-Am Contends that costly and inefficient movements of milk would be made solely for the purpose of pooling the milk of dairy farmers who supply the market.

Associated Milk Producers, Inc. (AMPI), a cooperative association which represents a substantial number of producers who supply milk for this market, submitted comments in support of the proposed reduction in the pooling standard for plants operated by cooperative associations. AMPI, as well as Mid-Am contends that the current pooling standard for cooperative association plants is no longer appropriate because of changes in the market environment that occurred as a result of the termination of the former, adjacent St. Louis-Ozarks order on April 1, 1985. Because of the termination of the adjacent order, certain plants and producer milk supplies have become associated with the Southwest Plains order, causing an overall change in the market's supply/demand relationahip. The cooperatives indicate that the situation is exacerbated by favorable weather conditions that have caused earlier than usual seasonal increases in production. Also, as schools are dismissed for the summer, there will be a reduction in the fluid milk requirements of distributing plants. As a result of these changes, the cooperatives contend that a lowering of the pooling standard for cooperative association plants is necessary to reflect the current market environment and to eliminate uneconomic movement of milk to distributing plants for the sole purpose of pooling the milk of dairy farmers who supply the market.

One comment in opposition to the proposed action was received from a dairy farmer. The producer indicated that, since Class I sales are relatively stable from year-to-year, a decline in the class I utilization of producer milk represents an oversupply of milk. The producer contends that an accommodation to pooling the milk by lowering the pooling standard is contrary to efforts to solve long-range supply problems in the dairy industry.

The pooling standard at issue is not directly associated with efforts under the price support program that address the overall milk supply situation in the country. The pooling standard is intended to insure the delivery of sufficient supplies of milk to distributing plants for fluid use as well as to insure the orderly disposition of those reserve supplies of milk that are associated with the market. Specific authority is provided in the order to temporarily revise the pooling standard as a result of changes in supply/demand relationships that could not be anticipated at the time the Southwest Plain order was established on the basis of testimony and evidence presented at a public hearing. The pooling standard may be increased or decreased by up to 10 percentage points to obtain needed shipments for the market or to prevent uneconomic shipments of milk to distributing plants.

A review of current market statistics indicates that significant changes have occurred in the market's supply/demand relationship as a result of the April 1, 1985, termination of the St. Louis-Ozarks order. Producer milk in Class I (fluid) uses increased by 58.7 percent from 69.7 million pounds in March to 110.6 million pounds in April. However, the volume of producer milk pooled under the order more than doubled from 121.8 million pounds in March 1985 to 248.5 million pounds in April 1985. As a result, the Class I utilization of producer milk declined by almost 13 percentage points from 57.3 percent in March to 44.5 percent in April.

Under these circumstances it is concluded that a reduction of 10 percentage points in the pooling standard for cooperative association plants during the months of May through August 1985 is necessary to reflect the changed market environment. In the absence of a lowering of the pooling standard, more milk would have to be delivered to distributing plants than is necessary to meet the fluid milk needs of the market. A lowering of the pooling standard will prevent uneconomic shipments of milk to distributing plants solely for the purpose of pooling the milk of dairy farmers who supply the market.

It is hereby found and determined that 30 day's notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly

marketing conditions in the marketing area for the months of May through August 1985;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were affored opportunity to file written data, views, or arguments concerning this temporary revision.

Therefore, good cause exists for making this temporary revision effective for the months of May through August 1985.

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

It is therefore ordered, That the 50 percent pooling standard specified in § 1106.7(c) of the order be reduced to 40 percent for the months of May through August 1985.

Effective date: June 10, 1985.

Signed at Washington, D.C., on June 5, 1985.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 85–13912 Filed 6–7–85; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1940

Methodology and Formulas for Allocation of Loan and Grant Program Funds

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is implementing a new regulation which shows the formulas used to allocate loan and grant program funds. The intended effect of this action is to inform the public of FmHA's method of allocating program funds to field offices by incorporating the methodology in published regulations. With respect to the rural housing program, this action is being taken, in part, as a result of litigation.

EFFECTIVE DATE: July 12, 1985.

FOR FURTHER INFORMATION CONTACT: David J. Howe, Director, Program Support Staff, Farmers Home Administration, USDA, 14th and Independence Ave., SW., Washington, D.C. 20250, Telephone (202) 382–9619.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only agency management. The formulas described in this regulation provide for the allocation of program funds to field offices within FmHA.

A Court has ordered FmHA to publish the funding allocation formula for its section 502 and 504 Single Family Housing Loan programs. FmHA is publishing these sections 502 and 504 program allocation formulas pursuant to that order. Although it is FmHA's position that the allocation of funds, being the distribution of resources, is a matter involving agency management, FmHA is, nevertheless, publishing all program allocation formulas for programs under both Title V of the Housing Act of 1949 and the Consolidated Farm and Rural Development Act to give the public notice of how funds are allocated.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

The FmHA programs and projects which are affected by this regulation are subject to intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," available in any FmHA Office.

The proposed rule to implement this regulation was published in the **Federal Register** for a sixty day comment period on February 15, 1985 (50 FR 6351). Four sets of comments were received. All comments received through April 23, 1985, were considered.

Discussion of Comments

The comments received appear immediately after the section or paragraph number. Our discussion of the comment appears immediately after the comment as a second paragraph.

Section 1940.552(j): [Require] all applications to be fully processed and certified as eligible within 30 days of receipt (pending availability of funds) so commitment of a loan is immediate when funds become available.

The comment is not considered at this time as it does not address any of the material presented in the proposed rule.

Section 1940.552(j): One commenter felt that the State Director should not be obligated to use the transition formula in suballocating funds based on the same formula used by the National Office and that the proposed rule was not clear on this matter.

To clarify this matter, §§ 1940.565(j), 1940.566(j), and 1940.567(j) have been revised as shown herein.

Section 1940.552(j): One commenter expressed the belief that some section 502 subsidized funds should be reallocated after the first quarter and that allocation below the state level should only be done when a particular problem is noted by the State Director.

We believe that the mid-year and emergency pooling provisions of § 1940.552(h) of the proposed rule adequately allow for the pooling and redistribution of funds. We feel that suballocation by the State Director of section 502 subsidized funds to at least the District Office level is necessary to make funds available to areas based on the funding needs identified in suballocating in accordance with § 1940.565(j).

Section 1940.565: The criteria do not include past utilization of funds.

Past utilization of funds was previously used as a factor for distribution of funds to the States. This factor was removed several years ago and need for housing (including factors such as substandard housing, low-income households, and rural population) was emphasized. Past utilization of funds does not necessarily identify those areas of greatest need.

Section 1940.565(b)(2): We find no justification for including rural population in any of the housing formulas. First of all, this criterion includes not only the eligible population which is already accounted for by § 1940.565(b)(3) but it also includes those not eligible for our program.

We agree with the commenter that part of the population in rural areas has already been counted in another factor and, therefore, the weight given this factor has been reduced. We have changed the final rule by using two population factors instead, and reducing the total weight given to these two population factors to 25 percent from the currrent 33⅓ percent weight. These factors are: (1) State's percentage of the National rural population—10 percent weight and (2) State's percentage of the National rural population in places of less than 2,500 population—15 percent weight. This will cover areas that are

most rural in character and will address the priorities for applicants set forth by the Rural Housing Amendments of 1983.

Section 1940.565(b)(3): We recommend that low-income weights be determined by the state's number of households with incomes below 50% of Census region median income as a percentage of the national total.

We believe that, for the formula, 80 percent of the median income for the incomes served is more adequate as a factor than 50 percent. It includes the families now eligible for the program, namely: low and very low-income. The use of 50 percent of median income as a factor will represent use of only 40 percent of the funds available in the program. However, in order to direct funds toward those most in need of housing and at the same time include those income groups eligible for the program, we produced two income factors, namely: (1) State's percentage of the number of National rural households between 50 and 80 percent of the area median income, and (2) State's percentage of the number of National rural households below 50 percent of area median income. These two criteria are given weights of 30 percent and 20 percent, respectively. We have decided to delete the exclusion of rural households with incomes under $5,000 from the formula in the final rule. The reason for including these households is that although the assistance may be mostly for repair and rehabilitation, they are also served by the program.

In consolidating the responses to the comments on § 1940.565(b)(2), above, and for this comment, we have increased the number of factors for allocation of funds to the States from 3 to 5, and selected more appropriate criterion weights.

Sections 1940.565(h) and 1940.552(h): The pooling requirements for each year should be published in the **Federal Register**.

Section 1940.565(h): Mid-year pooling . . . means that there is a redistribution of funds to offices where there is no demand.

See comments for § 1940.565(j). The **Federal Register** publication refers to the authority for pooling and indicates that the approximate dates for pooling are established by the Administrator for each affected program. (e.g., mid-year, year-end, emergency). The specific date for pooling depends on actual use of funds, the need of the program from which funds are pooled, and peak-loan activity periods during the administration of the Agency's other programs. We believe pooling requirements have been properly addressed in the proposed rule. Specific pooling dates are not shown in the **Federal Register** since such dates are not a rule and, if they were, it would be impossible to publish them for comment or even as a final rule, in a timely manner.

Section 1940.565(j): Suballocations to county offices limit the amount available to that particular office per quarter. If there is great demand in one county and no demand in another county, unspent funds remain idle.

There is some validity to the comment in that, in some cases, the quarterly allocation to a County Office may be so small that the funds allocated may not be sufficient to serve all eligible applicants with applications on hand. It may also be that the County Office may have more funds than needed for the quarter. To correct the situation we have revised § 1940.565(j) as follows:

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. The State Director will suballocate funds to the District Offices and may, at his/her option, suballocate to the County Offices. The State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.565(b) and (c) of this section. The suballocations to District or County Offices will not be reduced or restricted unless written approval is received from the National Office in response to a written request from the State Director. The State Director's request must include the reasons for the requested action (e.g., high housing inventory and/or high housing deliquency).

Section 1940.565(k): The language in § 1940.565(k) should be changed to clearly state that not less than 40% of funds, nationally, or 30% for each State, are available only for those at or below 50% of area median income.

The fund set-aside percentage is a matter of program statute and is so described in § 1940.565(k).

Section 1940.566(j): It was suggested that § 1940.566(j) should be deleted since the amount of funds suballocated are small and would result in miniscule suballocations.

We agree that allocations to County Offices may result in small allocations, but believe that funds could, at the option of the State Director, be effectively allocated to the District Office level. We revised § 1940.566(j) as follows:

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. At the option of the State Director, Section 504 loan funds may be suballocated to the District Offices. When performing a suballocation, the State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.566 (b) and (c) of this section.

Section 1940.567(b): The formula should be slightly changed to reflect the fact that the program is only available to very low-income elderly.

We believe that the criteria shown sufficiently cover the requirements for allocation of these funds.

Section 1940.567(j): Should be deleted.

See comments for § 1940.566(j). We revised § 1940.567(j) as follows:

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. At the option of the State Director, Section 504 grant funds may be suballocated to the District Offices. When performing a suballocation, the State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.567 (b) and (c) of this section.

Section 1940.575(b): It was recommended the criteria and weights should be changed to:

1. Number of tenants living in substandard housing—33.3%
2. Number of households with incomes below 50 percent of census region median income—33.3%
3. Number of tenants with incomes below 80 percent of area median income paying more than 35 percent of income for rent—33.3%

We feel the use of the first and third criterion is not possible due to the lack of adequate and current information or data that would be reflective of FmHA's rural areas. We also feel that the information is impossible to obtain for use by FmHA.

The use of the second criterion has some merit and reliable data can be obtained. However, the change will be considered for future implementation.

The Catalog of Federal Domestic Assistance programs affected are:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Very Low and Low-Income Housing Loans
10.411 Rural Housing Site Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Communities

10.419 Watershed Protection and Flood Prevention Loans
10.420 Rural Self-Help Housing Technical Assistance
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facility Loans
10.427 Rural Rental Assistance Payments
10.428 Economic Emergency Loans

List of Subjects in 7 CFR Part 1940

Administrative practice and procedure, Agriculture, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

Accordingly, Part 1940 of Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1940—GENERAL

(1) The authority citation for Part 1940 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

(2) A new Subpart L is added to read as follows:

* * * * *

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

Sec.
1940.551 Purpose and general policy.
1940.552 Definitions.
1940.553–1940.554 [Reserved]
1940.555 Insured Farm Operating loan funds.
1940.556 Guaranteed Farm Operating loan funds.
1940.557 Insured Farm Ownership loan funds.
1940.558 Guaranteed Farm Ownership loan funds.
1940.559 Farmer Programs and Indian Land Acquisition appropriations not allocated by State.
1940.560–1940.564 [Reserved]
1940.565 Section 502 Subsidized Rural Housing loans.
1940.566 Section 504 Housing Repair loans.
1940.567 Section 504 Housing Repair grants.
1940.568 Single Family Housing programs appropriations not allocated by State.
1940.569–1940.574 [Reserved]
1940.575 Section 515 Rural Rental Housing (RRH) loans.
1940.576 Rental Assistance (RA) for new construction.
1940.577 Rental Assistance (RA) for existing projects.
1940.578 Housing Preservation Grant (HPG) program.
1940.579 Multiple-Family Housing appropriations not allocated by State.
1940.580–1940.584 [Reserved]
1940.585 Community Facility loans.
1940.586 Water and Waste Disposal loans.
1940.587 Water and Waste Disposal grants.
1940.588 Business and Industrial guaranteed loans.
1940.589 Community and Business programs appropriations not allocated by State.
1940.590–1940.600 [Reserved]

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

§ 1940.551 Purpose and general policy.

(a) The purpose of this subpart is to set forth the methodology and formulas by which the Administrator of the Farmers Home Administration (FmHA) allocates program funds to the States. (The term "State" means any of the States of the United States, the Commonwealth of Puerto Rico, any territory or possession of the United States, or the Western Pacific Territories.)

(b) The formulas in this subpart are used to allocate program loan and grant funds to State Offices so that the overall mission of the Agency can be carried out. Considerations used when developing the formulas include enabling legislation, congressional direction, and administration policies. Allocation formulas ensure that program resources are available on an equal basis to all eligible individuals and organizations.

(c) The actual amounts of funds, as computed by the methodology and formulas contained herein, allocated to a State for a funding period are distributed to each State Office by an exhibit to this subpart. The exhibit is available for review in any FmHA State Office. The exhibit also contains clarifications of allocation policies and provides further guidance to the State Directors on any suballocation within the State.

§ 1940.552 Definitions.

(a) *Amount available for allocations.* Funds appropriated or otherwise made available to the Agency for use in authorized programs.

(b) *Basic formula criteria, data source and weight.* Basic formulas are used to calculate a basic state factor as a part of the methodology for allocating funds to the States. The formulas take a number of criteria that reflect the funding needs for a particular program and through a normalization and weighting process for each of the criteria calculate the basic State Factor (SF). The data sources used for each criteria is believed to be the most current and reliable information that adequately quantifies the criterion. The weight, expressed as a percentage, gives a relative value to the importance of each of the criteria.

(c) *Basic formula allocation.* The result of multiplying the amount available for allocation less the total of any amounts held in reserve or distributed by base or administrative allocation times the basic State factor for each State. The basic formula allocation (BFA) for an individual State is equal to:

BFA = (Amount available for allocation − NO reserve − Total base and administrative allocations) × SF.

(d) *Transition formula.* A formula based on a proportional amount of previous year allocation used to maintain program continuity by preventing large fluctuations in individual State allocations. The transition formula limits allocation shifts to any particular State in the event of changes from year to year of the basic formula, the basic criteria, or the weights given the criteria. The transition formula first checks whether the current year's basic formula allocation is within the transition range (+ or − percentage points of the proportional amount of the previous year's BFA).

$$\text{Transition range} = 1.0 \pm \frac{\text{Maximum 20\%}}{100} \times \frac{\text{Amount available for allocation this year}}{\text{Amount available for allocation previous year}} \times \text{State previous year BFA}$$

If the current year's State BFA is not within this transition range, the State formula allocation is changed to the amount of the transition range limit closest to the BFA amount. After having performed this transition adjustment for each State, the sum of the funds allocated to all States will differ from the amount of funds available for BFA. This difference, whether a positive or negative amount, is distributed to all States receiving a formula allocation by multiplying the difference by the SF. The end result is the transition formula allocation. The transition range will not

exceed 40% (±20%), but when a smaller range is used it will be stated in the individual program section.

(e) *Base allocation.* An amount that may be allocated to each State dependent upon the particular program to provide the opportunity for funding at least one typical loan or grant in each FmHA State, District, or County Office. The amount of the base allocation may be determined by criteria other than that used in the basic formula allocation such as agency historic data.

(f) *Administrative allocations.* Allocations made by the Administrator in cases where basic formula criteria information is not available. This form of allocation may be used when the Administrator determines the program objectives cannot be adequately met with a formula allocation.

(g) *Reserve.* An amount retained under the National Office control for each loan and grant program to provide flexibility in meeting situations of unexpected or justifiable need occurring during the fiscal year. The Administrator may make distributions from this reserve to any State when it is determined necessary to meet a program need or agency objective.

(h) *Pooling of funds.* A technique used to ensure that available funds are used in an effective, timely and efficient manner. At the time of pooling those funds within a State's allocation for the fiscal year or portion of the fiscal year, depending on the type of pooling, that have not been obligatedf by the State are placed in the National Office reserve. The Administrator will establish the pooling dates for each affected program.

(1) *Mid-year:* This pooling addresses the need to partially redistribute funds based on use/demand. Mid-year pooling occurs near the midpoint of the fiscal year.

(2) *Year-end:* This pooling is used to ensure maximum use of program funds on a national basis. Year-end pooling usually occurs near the first of August.

(3) *Emergency:* The Administrator may pool funds at any time that it is determined the conditions upon which the initial allocation was based have changed to such a degree that it is necessary to pool funds in order to efficiently carry out the Agency mission.

(i) *Availability of the allocation.* Program funds are made available to the Agency on a quarterly basis. In the high demand programs, it is necessary that specific instructions by given to the State Offices regarding the amount which is available for obligation during each quarter.

(j) *Suballocation by the State Director.* Dependent upon the individual program for which funds are being allocated, the State Director may be directed or given the option of suballocating the State allocation to District or County Offices. When suballocating the State Director may retain a portion of the funds in a State Office reserve to provide flexibility in situations of unexpected or justified need. When performing a suballocation the State Director will use the same formula, criteria and weights as used by the National Office.

(k) *Other documentation.* Additional instructions given to field offices regarding allocations.

§§ 1940.553–1940.554 [Reserved]

§ 1940.555 Insured Farm Operating loan funds.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria, data source and weight are:

(1) A=Farm operators with sales of $2,500 to $39,999 and less than 200 days work off farm. Source: U.S. Census of Agriculture. 15%

(2) B=Farm operators with sales of $40,000 or more and less than 200 days work off farm. Source: U.S. Census of Agriculture. 35%

(3) C=Tenant farm operators. Source: U.S. Census of Agriculture. 20%

(4) D=Three year average net farm income. Source: USDA Economic Research Service. 15% This criterion is the inverse of the division of the State mean net farm income by the National mean net farm income. This inverse is used because the need for assistance is inversely proportional to the level of net income. Limits of .5 and 1.5 are placed in this result to limit the influence on the allocation.

(5) E=Value of farm nonreal estate assets. Source: USDA Economic Research Service. 15%

The basic allocation formula is a two-step process. In step one, each criterion is converted to that State's percentage of a National total, multiplied by the weighting factor and summed to arrive at a State Factor: Aa+Bb+Cc+Dd+Ee=STATE FACTOR where A, B, C, D, and E represent selected Criteria expressed as a State Percentage of the U.S. total and a, b, c, d, and e represent the Weight expressed as a percentage, given to the selected criterion. The weight assigned each criterion is constant for all States. The State Factor represents the percentage of the total allocation by basic formulas that a State is to receive and is the sum of the weighted criteria percentage for each State. The basic formula allocation is the final step.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. Not used.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions participating in the formula allocation process do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Subobligation by the State Director.* See § 1940.552(j) of this subpart. Suballocations by the State Director are optional.

(k) *Other documentation.* See § 1940.552(k) of this subpart.

§ 1940.556 Guaranteed Farm Operating loan funds.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria, data source and weight are:

(1) A=Farm operators with sales of $2,500 to $39,999 and less than 200 days work off farm. Source: U.S. Census of Agriculture. 15%

(2) B=Farm operators with sales of $40,000 or more and less than 200 days work off farm. Source: U.S. Census of Agriculture. 35%

(3) C=Tenant farm operators. Source: U.S. Census of Agriculture. 20%

(4) D=Three year average net farm income. Source: USDA Economic Research Service. 15%. This criterion is the inverse of the division of the State mean net farm income by the National mean net farm income. This inverse is used because the need for assistance is inversely proportional to the level of net income. Limits of .5 and 1.5 are placed in this result to limit the influence on the allocation.

(5) E=Value of farm nonreal estate assets. Source: USDA Economic Research Service. 15%

The basic allocation formula is a two-step process. In step one, each criterion is converted to the State's percentage of a National total, multiplied by the weighting factor and summed to arrive at a State Factor: Aa+Bb+Cc+Dd+

Ee=State Factor Where A, B, C, D, and E represent selected Criteria expressed as a State Percentage of the U.S. total and a, b, c, d, and e represent Weight expressed as a percentage, given to the selected criterion. The weight assigned each criterion is constant for all States. The State Factor represents the percentage of the total allocation by basic formulas that a State is to receive and is the sum of the weighted criteria percentage for each State. The basic formula allocation is the final step.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. Not used.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions participating in the formula allocation process do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. Suballocations by the State Director are optional.

(k) *Other Documentation.* See § 1940.552(k) of this subpart.

§ 1940.557 Insured Farm Ownership loan funds.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria, data source and weight are:

(1) A=Farm operators with sales of $2,500 to $39,999 and less than 200 days work off farm. Source: U.S. Census of Agriculture. 15%

(2) B=Farm operators with sales of $40,000 or more and less than 200 days work off farm. Source: U.S. Census of Agriculture. 35%

(3) C=Tenant farm operations. Source: U.S. Census of Agriculture. 25%

(4) D=Three-year average net farm income. Source: USDA Economic Research Service. 15%. This criterion is the inverse of the division of the State mean net farm income by the National mean net farm income. This inverse is used because the need for assistance is inversely proportional to the level of net income. Limits of .5 and 1.5 are placed in this result to limit the influence of the allocation.

(5) E=Value of farm real estate assets. Source: USDA Economic Research Service. 10%. The basic allocation formula is a two-step process. In step one, each criterion is converted to that State's percentage of a National total, multiplied by the weighting factor and summed to arrive at a State Factor: Aa+Bb+Cc+Dd+Ee=State Factor where A, B, C, D, and E represent selected Criteria expressed as a State Percentage of the U.S. total and a, b, c, d, and e represent Weight expressed as a percentage, given to the selected criterion. The weight assigned each criterion is constant for all States. The State Factor represents the percentage of the total allocation by basic formulas that a State is to receive and is the sum of the weighted criteria percentage for each State. The basic formula allocation is the final step.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The transition range is plus or minus 15%.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions participating in the formula allocation process do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.522(h) of this subpart.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. Suballocations by the State Director are optional.

(k) *Other documentation.* See § 1940.552(k) of this subpart.

§ 1940.558 Guaranteed Farm Ownership loan funds.

(a) *Amount available for allocation.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria, data source and weight are:

(1) A=Farm operators with sales of $2,500 to $39,999 and less than 200 days work off farm. Source: U.S. Census of Agriculture. 15%

(2) B=Farm operators with sales of $40,000 or more and less than 200 days work off farm. Source: U.S. Census of Agriculture. 35%

(3) C=Tenant farm operations. Source: U.S. Census of Agriculture. 25%

(4) D=Three year average net farm income. Source: USDA Economic Research Service. 15%. This criterion is the inverse of the division of the State mean net farm income by the National mean net farm income. This inverse is used because the need for assistance is inversely proportional to the level of net income. Limits of .5 and 1.5 are placed in this result to limit the influence on the allocation.

(5) E=Value of farm real estate assets. Source: USDA Economic Research Service. 10%

The basic allocation formula is a two-step process. In step one, each criterion is converted to that State's percentage of a National total, multiplied by the weighting factor and summed to arrive at a State Factor: Aa+Bb+Cc+Dd+Ee=State Factor where A, B, C, D, and E represent selected Criteria expressed as a State Percentage of the U.S. total and a, b, c, d, and e represent the Weight expressed as a percentage, given to the selected criterion. The weight assigned each criterion is constant for all States. The State Factor represents the percentage of the total allocation by basic formulas that a State is to receive and is the sum of the weighted criteria percentage for each State. The basic formula allocation is the final step.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. Not used.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations:* See Section 1940.552(f) of this subpart. Jurisdictions participating in the formula allocation process do not have administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. Suballocations by the State Director are optional.

(k) *Other documentation.* See § 1940.552(k) of this subpart.

§ 1940.559 Farmer Programs and Indian Land Acquisition appropriations not allocated by State.

(a) *Emergency Disaster.* State allocations are not made since it is impossible to predict occurrences.

Obligating documents may be submitted to the Finance Office as loans are approved in designated areas. This type loan is available only in areas designated as disaster areas. Designations may be by a single county, multiple of counties or areas, depending upon scope and severity.

(b) *Soil and Water.* Funds are not allocated to States. Program size does not permit equitable distribution. Obligation of funds are on a first-come, first-served basis, subject to availability.

(c) *Indian Land Acquisition.* Control of funds retained in the National Office and allocated on an individual case basis. Program size and requirements do not permit equitable distribution on an allotment basis. Requests for funds will be made to the Director, Farm Real Estate and Production Division when it is determined the loan can be approved.

§§ 1940.560–1940.564 [Reserved.]

§ 1940.565 Section 502 subsidized Rural Housing loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units,

(2) State's percentage of the National rural population,

(3) State's percentage of the National rural population in places of less than 2,500 population,

(4) State's percentage of the National number of rural households between 50 and 80 percent of the area median income, and

(5) State's percentage of the National number of rural households below 50 percent of the area median income.

Data source for each of these criteria is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF)

SF=

(criterion 1 x weight of 25%)+
(criterion 2 x weight of 10%)+
(criterion 3 x weight of 15%)+
(criterion 4 x weight of 30%)+
(criterion 5 x weight of 20%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for Section 502 subsidized RH loans is plus or minus 15.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) *Mid-year:* If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) *Year-end:* Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. The State Director will suballocate funds to the District Offices and may, at his/her option, suballocate to the County Offices. The State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.565 (b) and (c) of this section. The suballocations to District or County Offices will not be reduced or restricted unless written approval is received from the National Office in response to a written request from the State Director. The State Director's request must include the reasons for the requested action (e.g., high housing inventory and/or high housing delinquency).

(k) *Other documentation.* The percentage distribution of funds to the States by income levels is based on prevailing legislation.

§ 1940.566 Section 504 Housing Repair loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b). The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units, and

(2) State's percentage of the National number of rural households below 50 percent of area median income.

Data source for each of these criteria is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF).

SF=

(criterion No. 1 × weight of 50%)+
(criterion No. 2 × weight of 50%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for section 504 Housing Repair Loans is plus or minus 15.

(e) *Base allocation.* Not used.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) Mid-year: If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) Year-end: Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. At the option of the State Director, section 504 loan funds may be suballocated to the District Offices. When performing a suballocation, the State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.566 (b) and (c) of this section.

(k) *Other documentation.* Not applicable.

§ 1940.567 Section 504 Housing Repair grants.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units,

(2) State's percentage of the National rural population 62 years and older, and

(3) State's percentage of the National number of rural households below 50 percent of area median income.

Data source for each of these criteria is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF).

SF=

(criterion No. 1 × weight of 33⅓%)+
(criterion No. 2 × weight of 33⅓%)+
(criterion No. 3 × weight of 33⅓%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for section 504 Housing Repair grants is plus or minus 15.

(e) *Base allocation.* Not used.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) *Mid-year:* If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) *Year-end:* Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. At the option of the State Director, section 504 grant funds may be suballocated to the District Offices. When performing a suballocation, the State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.567 (b) and (c) of this section.

(k) *Other documentation.* Not applicable.

§ 1940.568 Single Family Housing programs appropriations not allocated by State.

The following program funds are kept in a National Office reserve and are available as determined administratively:

(a) Section 523 Self-Help Technical Assistance Grants.

(b) Section 523 Land Development Fund.

(c) Section 524 Rural Housing Site Loans.

(d) Section 509 Compensation for Construction Defects.

(e) Section 502 Nonsubsidized Funds.

§ 1940.569–1940.574 [Reserved.]

§ 1940.575 Section 515 Rural Rental Housing (RRH) loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

The criteria used in the basic formula are:

(1) State's percentage of national rural population,

(2) State's percentage of national number of rural occupied substandard units, and

(3) State's percentage of national rural families with incomes below the poverty level.

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight assigned and summed to arrive at a State factor (SF).

SF=

(criterion No. 1 × weight No. 1)+
(criterion No. 2 × weight No. 2)+
(criterion No. 3 × weight No. 3)+

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart. The basic formula allocation (BFA) for an individual State is equal to:

BFA=(Amount available for allocation−No reserve−Total base and administrative allocations)×SF.

(d) *Transition formula.* See § 1940.552 (d) of this subpart. The transition formula first checks whether the current year's basic formula allocation is within the transition range (+ or − percentage points of the proportional amount of the previous year's BFA).

$$\text{Transition range} = 1.0 \pm \frac{\text{Percent range}}{100} \times \frac{\text{Amount available for BFA this year}}{\text{Available for BFA previous year}} \times \text{State previous year BFA}$$

If the current year's State BFA is not within this transition range, the State formula allocation is changed to the amount of the transition range limit closest to the BFA amount. After having performed this transition adjustment process for each State, the sum of the funds allocated to all States will differ from the amount of funds available for BFA. This difference, whether a positive or negative amount, is distributed to all States receiving a formula allocation by multiplying the difference by the SF. The end result is the transition formula allocation.

(e) *Base allocation.* See § 1940.552 (e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552 (f) of this subpart. Jurisdictions receiving formula allocations do not receive initial administrative allocations.

(g) *Reserve.* See § 1940.552 (g) of this subpart. A National reserve of approximately 10 percent of the program amount has been established for the RRH program. Generally, a request for additional funds will not be honored unless a jurisdiction has insufficient funds to obligate the loan requested, and the docket is developed to the point where the loan can be approved upon notification that funds are available.

(h) *Pooling of funds.* See § 1940.552 (h) of this subpart. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in a reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552 (i) of this subpart. The allocation of RRH funds is made available for States to obligate on a biannual basis although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(j) *Suballocation by the State Director.* See § 1940.552 (j) of this subpart. States allocated $15 million or more must reallocate RRH funds to District Offices based on the formula used by the National Office to allocate program funds to jurisdictions. State Directors who reallocate to District Offices may maintain a State Office reserve. In addition, they may establish a pooling date for all unobligated State program funds prior to the National Office pooling date in order to insure the use of all State program funds.

(k) *Other documentation.* Not applicable.

§ 1940.576 Rental Assistance (RA) for new construction.

(a) *Amount available for allocations.* See § 1940.552 (a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.575 (b) of this subpart.

(c) *Basic formula allocation.* See § 1940.575 (c) of this subpart.

(d) *Transition formula.* See § 1940.575 (d) of this subpart.

(e) *Base allocation.* See § 1940.575 (e) of this subpart.

(f) *Administrative allocations.* See § 1940.552 (f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552 (g) of this subpart. At the direction of the Administrator, units may be held for a specific multiple family housing program. At the Administrator's discretion, requests for these units may be handled on a first-come, first-served basis or on a priority basis.

(h) *Pooling of funds.* See § 1940.552 (h) of this subpart. RA is generally pooled at year-end. Pooled units will be placed in a reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552 (i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.522 (j) of this subpart. States that reallocate funds to District Offices must also reallocate RA based on the formula used by the National Office to allocate program funds to jurisdictions.

(k) *Other documentation.* Not applicable.

§ 1940.577 Rental Assistance (RA) for existing projects.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart. RA appropriated for existing projects will first be used to replace contracts expiring each fiscal year and for the first few months of the following fiscal year. This is done to assure continued RA funding. RA units not needed for replacement purposes will be used for existing multiple family housing projects experiencing servicing problems.

(b) *Basic formula criteria, data source and weight.* No formula or weighted criteria is used to allocate replacement RA. The basic allocation for replacement RA will be made based on the following:

(1) *Criteria.* This allocation is based on the estimated need to replace RA contracts expiring from the depletion of funds.

(2) *Date source.* The most accurate and current information available from FmHA computerized data sources.

(c) *Basic formula allocation.* While no formula will be used, the basic allocation will be made to each State according to the need determined using the basic criteria.

(d) *Transition formula.* Not applicable.

(e) *Base allocation.* Not applicable.

(f) *Administrative allocation.* Not applicable.

(g) *Reserve.* See § 1940.552(g) of this subpart. The National Office maintains a reserve adequate to compensate for the differences between actual and projected replacement activity. Units will be administratively distributed for existing housing to either satisfy previously unidentified replacement needs or address servicing situations. Units will be distributed to any State when the Administrator determines that additional allocations are necessary and appropriate.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Units will be pooled at the Administrator's discretion.

(i) *Obligation of the allocation.* See § 1940.578(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart.

(k) *Other documentation.* Not applicable.

§ 1940.578 Housing Preservation Grant (HPG) program.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.575(b) of this subpart.

(c) *Basic formula allocation.* See § 1940.575(c) of this subpart.

(d) *Transition formula.* See § 1940.575(d) of this subpart.

(e) *Base allocation.* See § 1940.552(e) of this subpart.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. No administrative allocation is made.

(g) *Reserve.* See § 1940.552(g) of this subpart. A National Office reserve of approximately 10 percent of the program amount is to be established for the HPG program. Generally, a request for additional funds will be honored if necessary to fund feasible HPG projects within a State where the formula allocation is insufficient.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Funds may be pooled after all HPG applications have been received and HPG fund demand by State has been determined. Pooled funds will be combined with the National Office reserve to fund eligible projects. Remaining HPG funds will be available for distribution for use under the section 504 program.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. The allocation is made available for States to obligate on an annual basis, although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(j) *Suballocation by the State Director.* Not applicable.

(k) *Other documentation.* Funds for the HPG program will be available for a limited period each fiscal year. Due to the requirements by law to allocate funds on a formula basis to all States and to have a competitive selection process for HPG project selection, FmHA will announce opening and closing dates for receipt of HPG applications. After the closing date, FmHA will review and evaluate the proposals, adjust State allocations as necessary to comply with with the law and program demand, and redistribute remaining unused HPG resources for use under section 504 (as required by statute).

§ 1940.579 Multiple Family Housing appropriations not allocated by State.

(a) *Section 514 Farm Labor Housing loans.* Funds are not allocated to States because of the small program size. Projects are funded on a first-come, first-served basis.

(b) *Section 516 Farm Labor Housing Grants.* Funds are not allocated to States because of the small program size. State Directors must obtain authorization from the National Office before permitting development of a full applications. Projects are funded on a first-come, first-served basis.

§§ 1940.580–1940.584 [Reserved]

§ 1940.585 Community Facility loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of National rural population—50 percent.

(2) State's percentage of National rural population with incomes below the poverty level—50 percent.

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF).

SF=
(criterion No. 1×50 percent)+
(criterion No. 2×50 percent)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart. States receiving administrative allocations do not receive formula allocations.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range for the transition formula equals 30 percent (±15%).

(e) *Base allocation.* See § 1940.552(e) of this subpart. States receiving administrative allocations do not receive base allocations.

(f) *Administrative allocation.* See § 1940.552(f) of this subpart. States participating in the formula base allocation procedures do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart. States may request funds by forwarding a completed copy of Guide 26 of Subpart A of Part 1942 of this chapter (available in any FmHA office), to the National Office. Generally, a request for additional funds will not be honored unless the State has insufficient funds to obligate the loan requested.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. State Director has the option to suballocate to District Offices.

(k) *Other documentation.* Not applicable.

§ 1940.586 Water and Waste Disposal loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of National rural population—50 percent.
(2) State's percentage of National rural population with incomes below the poverty level—50 percent.

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF).

SF=
(criterion No. 1 x .5) +
(criterion No. 2 x .5)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart. States receiving administrative allocations do not receive formula allocations.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range for the transition formula equals 30 percent (± 15%).

(e) *Base allocation.* See § 1940.552(e) of this subpart. States receiving administrative allocations do not receive base allocations.

(f) *Administrative allocation.* See § 1940.552(f) of this subpart. States participating in the formula and base allocation procedures do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart. Any State may request reserve funds by forwarding a completed copy of Guide 26 of Subpart A of Part 1942 of this Chapter (available in any office), to the National Office. Generally, a request for additional funds will not be honored unless the State has insufficient funds to obligate the loan requested.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(j) *Suballocation by the State Director.* See § 1940.552 (j) of this subpart. The State Director has the option to suballocate funds to District Offices.

(k) *Other documentation.* Not applicable.

§ 1940.587 Water and Waste Disposal grants.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of National rural population—50 percent.
(2) State's percentage of National rural population with incomes below the poverty level—50 percent

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF).

SF=
(criterion No. 1 x .5) +
(criterion No. 2 x .5)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart. States receiving administrative allocations do not receive formula allocations.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range for the transition formula equals 30 percent. (± 15%).

(e) *Base allocation.* See § 1940.552(e) of this subpart. States receiving administrative allocations do not receive base allocations.

(f) *Administrative allocation.* See § 1940.552(f) of this subpart. States participating in the formula and base allocation procedures do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart. Any State may request reserve funds by forwarding a completed copy of Guide 26 of Subpart A of Part 1942 of this Chapter (available in any office), to the National Office. Generally, a request for additional funds will not be honored unless the State has insufficient funds to obligate the grant requested.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. The State Director has the option to suballocate funds to District Offices.

(k) *Other documentation.* Not applicable.

§ 1940.588 Business and Industrial guaranteed loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

	Weight (percent)
(1) State's percentage of National rural population	33 3

	Weight (percent)
(2) State's percentage of National nonmetropolitan unemployment, and	33.4
(3) State's percentage of National rural population with incomes below poverty level	33.3

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF).

SF=
(Criterion No. 1 x weight No. 1)+
(Criterion No. 2 x weight No. 2)+
(Criterion No. 3 x weight No. 3)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range for the transition formula equals 30% (±15%).

(e) *Base allocations.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive initial administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart. A National reserve of approximately 10 percent of the program amount has been established for the B&I program. States may request reserve funds from the B&I reserve when all of the State's allocation has been obligated or will be obligated to the project for which the request is made.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Funds are generally pooled at mid-year and year end. Pooled funds will be placed in a reserve and made available on a priority basis to all States.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. There is a 6-day waiting period from the time project funds are reserved to the time they are obligated.

(j) *Suballocation by the State Director.* Not applicable.

(k) *Other documentation.* Not applicable.

§ 1940.589 Community and Business programs appropriations not allocated by State.

Watershed Protection Loans, Resource Conservation and Development Loans, and Flood Protection Loans: State allocations will not be made for these type loans. Instead, obligating documents may be submitted to the Finance Office when a loan is approved. Only states that are authorized to process PL 534 loans may submit obligating documents to the Finance Office for that type loan. Resource Conservation and Development (RC&D) loan funds will be used in preference to community facility funds in designated RC&D areas for loan purposes included in Subpart A of Part 1942 of this chapter.

§§ 1940.590–1940.600 [Reserved]

Dated: May 21, 1985.

Dwight O. Calhoun,

Acting Associate Administrator, Farmers Home Administration.

[FR Doc. 85–13723 Filed 6–7–85; 8:45 am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 84–119]

Importation of Cheese

Correction

In FR Doc. 85–11827, beginning on page 20389, in the issue of Thursday, May 16, 1985, make the following correction:

On page 20389, in the third column, "**DATES:** May 16, 1985." should have read: "**DATES:** Effective date: May 16, 1985."

BILLING CODE 1505–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–NM–46–AD; Amdt. 39–5081]

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires inspection of the lavatory drain ducts of the Boeing Model 757 series airplanes. This action is prompted by a reported wire bundle fire caused by leaking waste liquids contaminating damaged electrical wiring. Failure to correct these problems could result in additional wire bundle fires.

DATES: Effective June 28, 1985.

Compliance required as indicated in the body of the AD, unless already accomplished.

ADDRESSES: The service bulletins specified in this AD may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Alvin Habbestad, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office; telephone (206) 431–2942. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A recent inflight incident occurred in which both generators on a Boeing Model 757–200 airplane dropped off the line. The right generator could be reset, but when attempting to reset the left generator, smoke appeared from the left and right forward vent louvers in the passenger cabin. Investigation of the area revealed that eight power distribution wires were burned through in the side wall area of the forward left hand side of the electronics bay. It was determined that leaking waste fluids had contaminated damaged wires and caused the fire.

The Boeing Company has used a Trojan hot stamp wire marking machine to code airplane wiring. The machine was first used for marking 30 mil thick insulated wire, but was later used on certain of the newer 8.4 mil thick Kapton insulated wire. The machine can operate with the type face sufficiently misaligned, so that the lettering can cut into the insulation. This had negligible effect on the thicker insulation, but with the newer Kapton insulation it was possible for the type face to cut through the insulation and cause small pinholes. This amendment requires that wires damaged in such a manner be replaced.

The lavatory waste ducts use narrow clamps at several locations to secure the sleeves used in connecting and sealing sections of the ducting. Over a period of time, the clamps can come loose or cut into the sleeve, allowing a leak to develop. Even though the waste ducts are empty, except when draining the lavatory holding tanks, the cumulative effects of the leaking waste fluids can become noticeable over a period of time. The electrical short referred to above occurred when the amount of conductive lavatory waste fluid leaking from the waste duct was sufficient to spread from one damaged wire to another in the bundle, and cause an arc between two

phases of the three-phase wire bundle. Once the critical temperature was reached, the insulation of eight out of nine wires from three bundles were burned through. This amendment requires that the waste duct clamps be replaced with wider clamps, which will reduce the potential for leakage of waste fluids. In addition, this amendment requires that the wires be rerouted to preclude future electrical shorts.

Since this condition is likely to exist or develop on other airplanes of this same type design, this AD requires inspection or replacing and rerouting certain wire bundles, and replacing certain lavatory duct clamps.

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

The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89; 49 CFR 1.47.

2. By adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 757-200 series airplanes, certificated in all categories, listed in Boeing Service Bulletins 757-38-008 dated February 1, 1985, and 757-24-0025 dated May 3, 1985. To prevent the electrical shorting of certain wire bundles due to damaged wire and leaking lavatory waste fluids onto the wire, accomplish the following within the next 50 hours time in service after the effective date of this AD, unless already accomplished:

A. Perform a visual inspection of the forward lavatory waste drain ducts, to determine if there is any leakage from the duct seals. Repeat the inspection at intervals not to exceed 100 hours time in service.

B. If leaks are detected, clean and replace forward lavatory waste drain clamps in accordance with Boeing Service Bulletin 757-38-008, dated February 1, 1985, or later FAA approved revision, and continue to inspect in accordance with paragraph A. at intervals not to exceed 250 hours time in service.

C. Incorporation of Boeing Service Bulletin 757-38-008 dated February 1, 1985, or later FAA approved revision, to replace specified narrow clamps with wider clamps on the forward lavatory waste ducts, and incorporation of Boeing Service Bulletin 757-24-0025 dated May 3, 1985, or later FAA approved revision, to replace the damaged wire and to reroute the specified wire bundles from beneath the lavatories, terminates the repetitive inspection requirement of paragraph A., above.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received copies of the service bulletins may obtain copies upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington, 98124. These documents may be examined at the FAA, Northwest Mountain Region, 1900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 28, 1985.

Issued in Seattle, Washington, on June 3, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-13814 Filed 6-7-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-NM-51-AD; Amdt. 39-5080]

Airworthiness Directives; Fokker B.V. Model F27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Fokker Model F27 series airplanes which requires a one-time visual inspection, and repair if necessary, of the attachment of the ribs connecting the rudder tab control bracket to the tab skin. This action is prompted by one case of rudder tab flutter in which incorrect rivets used for the attachment was determined to be a factor. Flutter could lead to structural failure and loss of the airplane.

DATES: Effective June 28, 1985.

Compliance required within 20 days of the effective date of this AD unless already accomplished.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request from the Manager, Maintenance and Engineering, Fokker B.V., Product Support, P.O Box 7600, 1172J Schiphol Oost, The Netherlands. This information may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark E. Baldwin, Standardization Branch, ANM-113; telephone (206) 431-2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Ministerie van Verkeer, Rijksluchtvaartdienst (RLD), the Civil Aviation Authority of the Netherlands, has notified the FAA, in accordance with existing provisions of a bilateral agreement, that an unsafe condition may exist on certain Fokker F27 airplanes. Incorrect rivets used in the assembly of at least one rudder tab resulted in inadequate strength of the attachment of the ribs connecting the tab control bracket to the tab skin which contributed to flutter of the tab. The RLD issued Airworthiness Directive number 85-31, April 9, 1985, requiring a one-time visual inspection within 20 days of issue, and repair if necessary, of all F27 airplanes delivered with rudder

nbs not already inspected and repaired as necessary in accordance with Fokker Service Bulletin F27/55-58 dated March 28, 1985. Rudder tab flutter can result in structural failure and loss of flight control to an undetermined degree.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist on develop or airplanes of this type design registered in the United States, the FAA has determined that an AD is necessary which requires inspection, and repair if necessary, in accordance with Fokker Service Bulletin F27/55-58 dated March 28, 1985.

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

The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and if this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

Fokker: Applies to Model F27 series airplanes, serial numbers 10105 through 10648, 10654, 10658 through 10660, 10662 through 10667 and 10669 through 10672; certificated in all categories.

To insure structural integrity of the rudder tab, accomplish the following, unless already accomplished:

A. Conduct a one-time visual inspection of the rudder tab in accordance with Fokker Service Bulletin F27/55-58, dated March 28, 1985, within twenty days after the effective date of this AD.

B. If incorrect rivets are found, repair the tab before further flight in accordance with the above service bulletin or in a manner approved by the Manager, Seattle Aircraft Certification Office.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Fokker B.V., Product Support, P.O. Box 7600, 11172J Schiphol Oost, The Netherlands. These documents also may be examined at FAA Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This Amendment becomes effective June 28, 1985.

Issued in Seattle, Washington, on June 3, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-13813 Filed 6-7-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AWA-19]

Alteration and Establishment of VOR Federal Airways Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes a low altitude Federal airway structure using the new Frankston, TX, Very High Frequency Omni-Directional Radio Range and Distance Measuring Equipment (VOR/DME) installed for the enhancement of the traffic flow within the Houston Air Route Traffic Control Center (ARTCC) area.

EFFECTIVE DATE: 0901 G.M.T., August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

History

On April 3, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a new segment of V-569 and to create new airway V-583 using the new Frankston, TX, VOR/DME facility, to enhance traffic flow within the Houston ARTCC area (50 FR 13227). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a low altitude VOR Federal airway structure utilizing the new Frankston, TX, VOR/DME (FZT) facility (lat. 32°04'28.12"N., long. 95°31'50.28"W.), with a new segment of V-569 from Lufkin, TX, to Scurry, TX, and by creating new airway V-583 from Leona, TX, to Quitman, TX.

The FAA has determined that this rgulation only involves an established body of techncial 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.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 is revised to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

V–569 will be added effective June 6, 1985 (50 FR 14090). The following is an alteration to the original description of V–569.

V–569—[Amended]

By removing the words "to Lufkin." and by substituting the words "Lufkin; Frankston, TX; to Scurry, TX."

V–583—[New]

From Leona, TX, via Frankston, TX; to Quitman, TX.

Issued in Washington, D.C., on June 3, 1985.

James Burns, Jr.

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–13817 Filed 6–7–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. 84F–0316]

Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations that permit gamma radiation treatment of food to include the irradiation of dry or dehydrated enzyme preparations. This action responds to a food additive petition filed by Radiation Technology, Inc.

DATES: Effective June 10, 1985; objections by July 10, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Clyde A. Takeguchi, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION:

Introduction

In a notice published in the **Federal Register** of October 19, 1984 (49 FR 41111), FDA announced that food additive petition (FAP 4M3815) had been filed by Radiation Technology, Inc., Lake Denmark Rd., Rockaway, NJ 07866, proposing that the food additive regulations be amended to provide for the safe use of a cobalt-60 or cesium-137 source of gamma radiation to control insect and microbial infestation in certain dried enzyme preparations at doses not to exceed 10 kiloGray (kGy) (1 megarad, Mrad).

Background

Dry enzyme preparations can be used as food-processing aids. The petitioner has requested authorization for radiation treatment of bulk or prepackaged dry, powdery, enzyme preparations. The term "enzyme preparations" may be used to include immobilized enzyme preparations. The agency has, therefore, considered the term "dry or dehydrated enzyme preparations" to include crude or partially purified enzymes as well as immobilized enzymes for purpose of its safety review.

Dry enzyme preparations are used as processing aids and constitute a very minor portion of the daily diet. In an advance notice of proposed rulemaking (46 FR 18992; March 27, 1981), FDA stated that it intended to adopt a policy that a food class comprising only a minor portion of the daily diet and irradiated at a dose of 5 Mrad or less may be considered safe for human consumption based upon minimum biological testing. FDA has evaluated available data on the matter and relevant comments submitted in the ongoing rulemaking dealing with food irradiation. The agency continues to believe that animal feeding studies are not necessary to demonstrate that irradiation of dry enzymes poses no safety problems.

Nevertheless, in evaluating the petition, the agency considered whether data from a U.S. Department of Agriculture-sponsored study, conducted by Raltech Scientific Services, raised sufficient concern to preclude issuing this regulation. Citing this study, comments to an earlier proposed regulation published by FDA concerning the use of radiation to treat food (49 FR 5714; February 14, 1984) claimed that mice fed irradiated chicken were found to have a "statistically significant" increase in the incidence of testicular tumors, and argued that regulations permitting food irradiation should, therefore, not issue. The Center for Food Safety and Applied Nutrition (the Center) evaluated the relevant histopathology data from that study and did not find any treatment-related effect that is either biologically or statistically significant. The National Toxicology Program's (NTP) Board of Scientific Counselors conducted, at FDA's request, a peer review of the relevant histopathology data, including an open meeting on March 28, 1985. In its final summary minutes dated May 16, 1985, and submitted to FDA, NTP's Board of Scientific Counselors concluded that the available data did not allow the study to be categorized as demonstrating a carcinogenic response. The agency has reviewed all available animal feeding studies in its files and finds that no study, including the Raltech study, showed treatment-related effects that would preclude approving this petition.

FDA has evaluated information submitted by the petitioner, as well as information already in the agency's files, and concludes that the proposed use of gamma radiation is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before July 10, 1985 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 179

Food additives, Food packaging, Irradiation of foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 179 is amended as follows:

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING, AND HANDLING OF FOOD

1. The authority citation for Part 179 is revised to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10.

2. In § 179.22 in the table in paragraph (b) by alphabetically inserting a new item to read as follows:

§ 179.22 Gamma radiation for the treatment of food.

* * * * *

(b) * * *

Food for irradiation	Limitations	Use
Dry or dehydrated enzyme preparations (including immobilized enzyme preparations).	Absorbed dose: Not to exceed 10 kiloGray (kGy) (1 megarad, Mrad).	Control of insects and/or micro-organisms.

* * * * * * *

Dated: June 4, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-13821 Filed 6-5-85; 10:33 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD13 85-05]

Regatta; Annual Clarkston, WA, Limited Hydroplane Races

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is promulgating permanent special local regulations for a part of the waters of the Snake River at Clarkston, Washington, from the area west of the confluence of the Snake and Clearwater Rivers, to the area east of the Red Wolf Crossing Bridge. The special regulations will be in effect daily on Friday and Saturday, 5 and 6 July 1985, during the hours from 8:00 a.m. to 6:00 p.m., and on Sunday 7 July 1985 from 8:00 a.m. until one hour after the conclusion of the last race; and thereafter annually on the first Friday, Saturday and Sunday in July as published in the Local Notice to Mariners. This is being done to promote the safe conduct of the Clarkston, Washington, Limited Hydroplane Races, an approved marine event, scheduled during this time period. It is intended to restrict general navigation in the area for the safety of spectators and participants in this event.

EFFECTIVE DATE: July 5, 1985.

FOR FURTHER INFORMATION CONTACT: LCDR M. P. Troseth, Chief, Group Operations Department, U.S. Coast Guard Marine Safety Office, 6767 North Basin Avenue, Portland, Oregon 97217, (503) 240-9317.

SUPPLEMENTARY INFORMATION: On Monday, April 15, 1985, the Coast Guard published a Notice of Proposed Rule Making in the **Federal Register** for these regulations (50 FR 14722). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of these regulations are LT M. P. Rand, USCG, Project Officer, U.S. Coast Guard Marine Safety Office, Portland, Oregon, and LCDR D. G. Beck, USCG, Project Attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Comments

No comments were received. Minor editorial changes were made in the final rule by the drafters to improve the overall clarity of the rule.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. These regulations affect a short section of the Snake River with only light commercial traffic and will be in effect for only three (3) days, two of those being Saturday and Sunday. During the hours of the races, 5 through 7 July 1985, and annually hereafter, the Patrol Commander will allow commercial traffic to transit the area between races.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

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

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

2. Part 100 of Title 33, Code of Federal Regulations, is amended by adding § 100.1302 to read as follows:

§ 100.1302 Annual Clarkston, Washington, Limited Hydroplane Races.

(a) On Friday and Saturday, 5 and 6 July 1985, this regulation will be in effect from 8:00 a.m. to 6:00 p.m. On Sunday, 7 July 1985, this regulation will not in effect from 8:00 a.m. until one hour after the conclusion of the last race. This section will be effective thereafter annually on the first Friday, Saturday,

and Sunday in July as published in the Local Notices to Mariners.

(b) The Coast Guard will restrict general navigation and anchorage by this regulation during the hours it is in effect on the waters of the Snake River at Clarkston, Washington from the area west of the confluence of the Snake and Clearwater Rivers, to the area east of the Red Wolf Crossing Bridge.

(c) When deemed appropriate, the Coast Guard may establish a patrol consisting of active and auxiliary Coast Guard personnel and vessels in the area described in paragraph (b) of this section. The patrol shall be under the direction of a Coast Guard officer or petty officer designated as Coast Guard Patrol Commander. The Patrol Commander is empowered to forbid and control the movement of vessels and persons in the area described in paragraph (b) of this section.

(d) The Patrol Commander may authorize vessels to be underway in the area described in paragraph (b) of this section during the hours this regulation is in effect. All vessels permitted to be underway in the controlled area (other than racing or official vessels) shall do so only at speeds which will create minimum wake consistent with maintaining steerageway, and not to exceed seven (7) miles per hour. This speed limit may be adjusted at the discretion of the Patrol Commander to enhance the level of safety.

(e) A succession of sharp, short signals by whistle, siren, or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the patrol vessel personnel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

Dated: May 30, 1985.

H.W. Parker,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 85-13924 Filed 6-7-85; 8:45 am]

BILLING CODE 4910-10-M

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33 CFR Part 100

[CGD3 85-05]

Regatta; O.P.A. Classic, Barnegat Bay, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the annual Offshore Performance Association (O.P.A.) Classic. The purpose of this regulation is to provide for the safety of participants and spectators on navigable waters during this powerboat race event.

EFFECTIVE DATE: This regulation becomes effective on June 15, 1985.

FOR FURTHER INFORMATION CONTACT: LT. D. R. Cilley, (212) 668-7974.

SUPPLEMENTARY INFORMATION: On April 18, 1985, the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (50 FR 15459). Interested persons were requested to submit comments, and no comments were received. Accordingly, no changes have been made to the proposed rule as published. The regulation is being made effective in less than 30 days from the date of publication. There was not sufficient time remaining in advance of the event to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LT. D. R. CILLEY, Project Officer, Third Coast Guard District Boating Safety Division, and Ms. MaryAnn ARISMAN, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The Annual O.P.A. Classic is a powerboat race sponsored by the Offshore Performance Association held on Barnegat Bay, New Jersey. This event is traditionally held each year on the second Saturday in June. Because of the annual nature of this event the Coast Guard has decided to promulgate a permanent amendment to Part 100 of Title 33, Code of Federal Regulations. The Coast Guard will provide the public with full and adequate notice of this annual powerboat race by publication in the Third District Local Notice to Mariners. There will be one (1), 4 lap, 60 mile National Powerboat Association (N.P.B.A.) sanctioned race. The course has been laid out so that there should be little or no interference with vessel traffic in the Intercoastal Waterway (I.C.W.). The sponsor is providing in excess of 40 patrol vessels in conjunction with Coast Guard and local resources to patrol this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement in the race course area and will establish spectator anchorages for the spectator fleet. Mariners are urged to use extreme caution when transiting the area due to the large number of spectator craft, and should adhere closely to the charted I.C.W.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the race. This should have a favorable impact on commercial facilities providing services to the spectators. This area is used primarily by recreational boaters; any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulation

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

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

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

2. Part 100 is amended by adding § 100.301 to read as follows:

§ 100.301 O.P.A. Classic, Barnegat Bay, New Jersey.

(a) *Regulated Area.* Barnegat Bay, New Jersey in the area bounded on the north by 39 degrees 55 minutes north latitude, and on the south by 39 degrees 48 minutes north latitude, the Intercoastal Waterway (I.C.W.) on the west and Island Beach on the east.

(b) *Effective Period.* This regulation will be effective from 10:00 a.m. to 3:00 p.m. on June 15, 1985 and thereafter annually on the second Saturday in June unless otherwise specified in the Third District Local Notice to Mariners, and in a **Federal Register** notice. In case of postponement this regulation will be in effect the following day.

(c) *Special Local Regulations.* (1) Mariners shall use extreme caution when transiting the regulated area and shall adhere closely to the charted I.C.W.

(2) All persons or vessels not registered with sponsor as participants or not part of the regatta patrol are considered spectators. Spectator vessels must be at anchor within the designated spectator area or moored to a waterfront

facility in a way that will not interfere with mariners transiting the I.C.W. in Barnegat Bay.

(3) The spectator fleet shall be held behind special race course buoys provided by the sponsor in the following areas:

(i) Between the race course and Island Beach State Park in the area north of Tices Shoal.

(ii) Between the race course and the I.C.W. in the area from Holly Park to Forked River.

(4) No spectator or press boats shall be allowed out onto or across the race course without Coast Guard escort.

(5) The sponsor of the race shall anchor race committee boats at each of the five (5) turns. Checkpoints shall be positioned so that race participants will pass no closer to the I.C.W. than 200 feet. Special markers shall be provided by the sponsor to separate the course from the I.C.W.

(6) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(7) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated June 3, 1985.

P.A. Yost,

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

[FR Doc. 85-13926 Filed 6-7-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 09-85-11]

Special Local Regulations; 1985 Grand Prix, Niagara River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the 1985 Grand Prix to be held on the Niagara River, Tonawanda Channel. This event will be held on July 27-28, 1985 from 11:00 AM (EDT) until 7:00 PM. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on July 27, 1985 and terminate on July 28, 1985.

FOR FURTHER INFORMATION CONTACT: MSTC Cary H. Lindsay, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: A notice of prepared rule making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The application to hold this event was not received with sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are MSTC Cary H. Lindsay, project officer, Office of Search and Rescue and LCDR A. R. Bulter, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Grand Prix will be conducted on the Niagara River, Tonawanda Channel, on July 27-28, 1985. This event will have an estimated 50-60 hydroplanes which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Station, Buffalo, NY).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

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

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

2. Part 100 is amended to add a temporary § 100.35-0911 to read as follows:

§ 100.35-0911 1985 Grand Prix, Niagara River.

(a) *Regulated Area.* That portion of the east branch of the Niagara River, Tonawanda Channel, from the overhead cable, 1300 yards northeast of the South Grand Island Bridge, to an east-west line through Tonawanda Channel Buoy 35 (LLP 29).

(b) *Special Local Regulations.* (1) The above area will be restricted to vessel navigation or anchorage from 11:00 AM (EDT) until 7:00 PM each day on July 27-28, 1985.

(2) The patrol of that portion of Niagara River will be under the direction of a designated Coast Guard Patrol Commander who is empowered to forbid and control movement of vessels in the area before, during, and after the events for such time as he finds it necessary for the safe and orderly conduct of the events.

(3) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) This § 100.35-0911 will become effective at 11:00 AM (EDT) to 7:00 PM on July 27 and 28, 1985.

Dated: May 31, 1985.

B.K. Schaeffer,

Captain, U.S. Coast Guard, Chief of Staff, Ninth Coast Guard District.

[FR Doc. 85-13928 Filed 6-7-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CGD09-85-02]

Special Anchorage Area, Little Traverse Bay, Lake Michigan, Harbor Springs, MI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard at the request of the Harbormaster, City of Harbor Springs, Michigan, is amending the Anchorage Regulations by establishing a channel through the existing Special Anchorage Area at Little Traverse Bay in Lake Michigan, Harbor Springs, Michigan.

The Harbormaster, City of Harbor Springs has requested the elimination of a section of the existing Special Anchorage Area in order to designate a navigable channel through the harbor.

The creation of this channel through the existing Special Anchorage Area will increase navigational safety in the harbor as it will provide direct access from the inner harbor to the open waters of Little Traverse Bay and Lake Michigan.

EFFECTIVE DATE: July 10, 1985.

FOR FURTHER INFORMATION CONTACT: Ensign George Burns III, Marine Safety Division, 1240 East Ninth Street, Cleveland, OH 44199, (216) 522–3919.

SUPPLEMENTARY INFORMATION: On 1 April 1985 the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (50 FR 12837). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are Ensign George Burns III, Marine Safety Division, project officer, and Lieutenant R. A. Pelletier, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Comments

There were no comments received. There have therefore been no changes to the final rule.

Economic Assessment and Certification

This regulation is considered to be nonsignificant in accordance with DOT Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5). Its economic impact is expected to be minimal since this modification only affects a portion of an existing anchorage area. Based upon this assessment, it is certified in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this regulation will not have a significant economic impact on a substantial number of small entities. Also, the regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

PART 110—[AMENDED]

Final Regulation

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Part 110 § 110.82a is revised to read as follows:

§ 110.82a Little Traverse Bay, Lake Michigan, Harbor Springs, Michigan.

(a) *Area 1.* Beginning at latitude 45°25'42.2" N., Longitude 84°59'7.5" W.; thence to latitude 45°25'39.5" N., longitude 84°59'09" W.; thence to latitude 45°25'35" N., longitude 84°59'07" W.; thence to latitude 45°25'35" N., longitude 84°58'55.2" W.; thence to latitude 45°25'42.2" N., longitude 84°58'56.5" W., thence to the point of beginning.

(b) *Area 2.* Beginning at latitude 45°25'42.2" N., longitude 84°58'54" W.; thence to latitude 45°25'35" N., longitude 84°58'53" W.; thence to latitude 45°25'35" N., longitude 84°58'24.8" W.; thence to latitude 45°25'36.1" N., longitude 84°58'23"W.; thence to latitude 45°25'42.2" N., longitude 84°58'39" W., thence to the point of beginning.

Dated: May 29, 1985.

A.M. Danielsen,

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

[FR Doc. 85–13923 Filed 6–7–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[08–84–07]

Drawbridge Operations Regulations; Belle River, Lower Grand River and Pierre Pass, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulations governing the operation of the following drawbridges:

(1) The pontoon bridge over Belle River, mile 43.5, on LA 70 near Belle River, Assumption Parish, Louisiana.

(2) The pontoon bridge over the Lower Grand River, mile 25.9, on LA 997 at Pigeon, Iberville Parish, Louisiana.

(3) The swing span bridge over Pierre Pass, mile 1.0, on LA 70 at Pierre Pass, Assumption Parish, Louisiana.

This change requires that the draws of the three bridges open on at least four hours advance notice from 10 p.m. to 6 a.m., and open on signal from 6 a.m. to 10 p.m. Presently, these draws are required to open on signal at all times.

The change is being made because of the infrequent requests for opening the draws during the prescribed advance notice period. This action will relieve the bridge owner of the burden of having persons constantly available at the bridges to open the draws during that period, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on July 10, 1985.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On 29 November 1984, the Coast Guard published a proposed rule (49 FR 46917) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 12 December 1984. In each notice, interested persons were given until 14 January 1985 to submit comments.

Drafting Information:

The drafters of these regulations are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Comments:

Two comments were received expressing concern about the proposed rule. One was from a LDOTD bridgetender, who felt that the bridge over Pierre Pass could pose a safety hazard during the advance notice period, in the absence of a full time bridgetender to guard against possible vandalism and to perform preventive maintenance. This concern is unfounded, based on the experience of the LDOTD in the operation of other bridges with advance notice periods of eight to 24 hours daily. A marine service company expressed concern about a tow possibly having to wait at either the Belle River or Lower Grand River bridge for an opening during the advance notice period, because of being unable to keep the scheduled time of arrival. In a meeting with that company, the LDOTD reviewed how a tow could schedule an opening four hours in advance and revise that schedule while in transit by contacting the LDOTD District Office through public coast stations and/or LDOTD area bridges with radio telephones. Additionally, the LDOTD explained that a bridgetender would be at each bridge one half-hour before and after the scheduled arrival time, to provide an opening window. In light of this, the company withdrew its objection, which largely was based on the misconception that the advance notice would be in effect around the clock.

The National Oceanic and Atmospheric Administration (NOAA) commented that the proposed Belle River section number (§ 117.424) already is used for Bayou de Large, as published in the **Federal Register** of 29 October 1984 (FR 43460). Also, NOAA suggested that the Belle River and Lower Grand River mileage numbers be changed to correspond with those shown on NOAA navigation charts and NOAA's Coast Pilot publication. NOAA's comments

and suggestion are accepted. This document revises the section number for Bayou du Large with no change in the bridge's operating regulation, and, corrects the mileage numbers for the Belle River and Lower Grand River bridges.

Economic Assessment and Certification:

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels pass through the bridges during the prescribed advance notice period. For that period in 1983, both the Belle River and Lower Grand River bridges averaged 17.7 openings per month (one opening about every two days) while the Pierre Pass bridge averaged 9 openings per month (one opening about every three days). These vessels can reasonably give four hours notice for a bridge opening between 10 p.m and 6 a.m. by placing a collect call at any time to the LDOTD District Office in Baton Rouge, Louisiana, telephone (504) 925–8541. From afloat, this contact can be made through the Morgan City or Baton Rouge Public Coast Station.

Scheduling their arrival at the appointed time would involve little or no additional expense to the mariners. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

The LDOTD recognizes that there may be an unusual occasion, during the advance notice period, to open the bridges on less than four hours advance notice for a bona fide emergency or to operate the bridges on demand for an isolated but temporary surge in waterway traffic, and has committed to doing so if such an event should occur.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

PART 117—[AMENDED]

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

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

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.424 is revised and §§ 117.443, 117.478 and 117.486 are added to read as set forth below:

§ 117.424 Belle River

The draw of the S70 bridge, mile 23.8 (Landside Route) near Belle River, shall open on signal; except that, from 10 p.m. to 6 a.m., the draw shall open on signal if at least four hours notice is given. During the advance notice period, the draw shall open on less than four hours notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.

§ 117.443 Du Large Bayou.

The draw of the Terrebonne Parish bridge, mile 23.2, near Theriot, shall open on signal; except that, from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

§ 117.478 Lower Grand River.

The draw of the S997 bridge, mile 41.5 (Landside Route) at Pigeon, shall open on signal; except that, from 10 p.m. to 6 a.m., the draw shall open on signal if at least four hours notice is given. During the advance notice period, the draw shall open on less than four hours notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.

§ 117.486 Pierre Pass.

The draw of the S70 bridge, mile 1.0 at Pierre Part, shall open on signal; except that, from 10 p.m. to 6 a.m., the draw shall open on signal if at least four hours notice is given. During the advance notice period, the draw shall open on less than four hours notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.

Dated: May 28, 1985.

W.H. Stewart,

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

[FR Doc. 85–13927 Filed 6–7–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7–85–09]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Florida Department of Transportation, the Coast Guard is adding regulations governing the McCormick bridge, mile 747.5 at Jacksonville Beach, by permitting the number of openings to be limited during certain periods. This change is being made because vehicular traffic has increased. This action will accommodate the needs of vehicular traffic yet still provide for the reasonable needs of navigation.

EFFECTIVE DATES: These regulations become effective on July 10, 1985.

FOR FURTHER INFORMATION CONTACT: Walt Paskowsky, Bridge Administration Specialist, (305) 350–4103.

SUPPLEMENTARY INFORMATION: On March 25, 1985, the Coast Guard published proposed rules (50 FR 11736) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated April 2, 1985. In each notice interested persons were given until May 9, 1985 to submit comments.

Drafting Information:

The drafters of these regulations are Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Comments:

Two comments were received. Both supported the proposal.

Economic Assessment and Certification:

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because these regulations exempt tugs with tows and regularly scheduled cruise vessels. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

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

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.261 is revised by redesignating paragraph (a) as (a–1) and adding a new paragraph (a) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami.

(a) The draw of the McCormick Bridge, mile 747.5 at Jacksonville Beach, shall open on signal except as follows:

(1) During April, May, October, and November, from 7 a.m. until 8:30 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday except federal holidays, the draw need open only on the hour and half-hour.

(2) During April, May, October, and November, from 12 noon until 6 p.m. Saturday, Sunday, and federal holidays, the draw need open only on the hour and half-hour.

(3) Public vessels of the United States, tugs with tows, regularly scheduled cruise vessels, and vessels in distress shall be passed at any time.

* * * * *

Dated: May 24, 1985.

A.R. Larzelere,

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

[FR Doc. 85–13921 Filed 6–7–85; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[AL–012; A–4–FRL–2848–5]

Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the State of Alabama

AGENCY: Environmental Protection Agency.

ACTION: Delegation of authority.

SUMMARY: On March 25, 1985, the State of Alabama requested that EPA delegate authority for implementation and enforcement of 13 additional categories of Standards of Performance for New Stationary Sources (NSPS), and 3 additional categories of National Emission Standards for Hazardous Air Pollutants (NESHAP). Since EPA's review of pertinent State laws and rules and regulations showed them to be adequate for the implementation and enforcement of these Federal Standards, the Agency has made the delegations as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is April 5, 1985.

ADDRESSES: Copies of the requests for delegation of authority and EPA's letter of delegation are available for public inspection at EPA's Region IV Office, 345 Courtland Street, NE, Atlanta, Georgia 30365.

All reports required pursuant to the newly delegated standards (listed below) should be submitted to the following address: Air Division, Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Kelly McCarty, at the EPA Region IV address listed above, and phone 404/881–3286 or FTS 257–3286.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with sections 101 and 111(c)(1) of the Clean Air Act, authorizes EPA to delegate authority to implement and enforce the standards set out in 40 CFR Part 60, NSPS, and 40 CFR Part 61, NESHAP.

On August 5, 1976, EPA initially delegated the authority for implementation and enforcement of the NESHAP and NSPS programs to the State of Alabama. On March 28, 1985, Alabama requested a delegation of authority for implementation and enforcement of the following recently promulgated NSPS categories found in 40 CFR Part 60:

Subpart EE: Surface Coating of Metal Furniture
Subpart KK: Lead-Acid Battery Manufacture
Subpart LL: Metallic Mineral Processing Plants
Subpart NN: Phosphate Rock Plants
Subpart QQ: Graphic Arts Industry: Publication Rotogravure Printing
Subpart RR: Pressure Sensitive Tape and Label Surface Coating Industry
Subpart SS: Industrial Surface Coating—Large Appliances
Subpart TT: Metal Coil Surface Coating Operations
Subpart UU: Asphalt Processing and Asphalt Roofing Manufacture
Subpart WW: Beverage Can Surface Coating Industry
Subpart GGG: VOC Fugitive Emission Sources—Petroleum Refineries
Subpart HHH: Synthetic Fiber Production Facilities
Subpart JJJ: Petroleum Dry Cleaners

On the same date, the State of Alabama also requested authority for the following recently adopted NESHAP categories:

Subpart J: Benzene Equipment Leaks
Subpart M: Asbestos
Subpart V: Benzene Fugitive Emission Sources

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for these source categories with the conditions set forth in the original delegation letter of August 5, 1976. Alabama sources subject to the requirements of Subparts EE, KK, LL, NN, QQ, RR, SS, TT, UU, WW, GGG, HHH, and JJJ of 40 CFR Part 60, and Subparts J, M, and V of 40 CFR Part 61, will now be under the jurisdiction of the State of Alabama.

(Secs. 101, 111, and 301 of the Clean Air Act (42 U.S.C. 7401, 7410, 7411, and 7601))

Dated: May 28, 1985.

John A. Little,

Acting Regional Administrator.

[FR Doc. 85–13872 Filed 6–7–85; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 65

[A–3–FRL–2845–6]

Approval of a Delayed Compliance Order Issued by the Pennsylvania Department of Environmental Resources to Anchor Hocking Corporation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of the Environmental Protection Agency hereby approves a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to Anchor Hocking Corporation. The Order requires the company to bring air emissions from its glass container closure manufacturing facility in Connellsville, Pennsylvania into compliance with certain regulations contained in the Federally approved Pennsylvania State Implementation Plan (SIP) by April 21, 1987. Because of the Administrator's approval, compliance with the Order by Anchor Hocking will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the Order during the period the Order is in effect.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Joseph S. Arena, Enforcement Policy & State Coordination Section (3AM21), Air Management Division, U.S. EPA, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–6553.

ADDRESSES: A copy of the Delayed Compliance Order, and supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and

copying (for appropriate charges) during normal business hours at: U.S. EPA, Region III, Air Management Division (3AM21), 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

SUPPLEMENTARY INFORMATION: On September 25, 1984 the Regional Administrator of the Environmental Protection Agency's Region III Office published in the **Federal Register**, Vol. 49, No. 187, a notice proposing approval of a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to Anchor Hocking Corporation. The notice asked for public comments by October 25, 1984 on the EPA proposal.

No public comments were received by this office, therefore, the delayed compliance order issued to Anchor Hocking is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Anchor Hocking on a schedule to bring its glass container closure manufacturing facility in Connellsville into compliance as expeditiously as practicable with Title 25 Pennsylvania Code, section 129.52, "Surface Coasting Processes", a part of the federally approved Pennsylvania State Implementation Plan. The order also imposes interim requirements which meet section 113(d)(1)(C) and 113(d)(7) of the act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Anchor Hocking to delay compliance with SIP regulations covered by the Order until April 21, 1987. (The proposed rulemaking notice contained an inadvertent statement that, "The order requires final compliance with the regulation by April 21, 1986 through the use of low solvent coatings, or by April 21, 1987 through the use of control equipment." It should have read, "The order requires final compliance by April 21, 1987 through the use of low solvent coatings or by the use of control equipment.") The company is unable to immediately comply with these regulations. EPA has determined that its approval of the Order shall be effective June 10, 1985 because of the need to immediately place Anchor Hocking on a schedule which is effective under the Clean Air Act for compliance with the applicable requirements of the Implementation Plan.

List of Subjects in 40 CFR Part 65

Air pollution control.

(42 U.S.C. 7413(d), 7601)

Dated: June 3, 1985.

Lee M. Thomas,

Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDER

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 7413(d), 7601.

2. By adding the following entry to the table in Part 65:

§ 65.431 EPA approval of State delayed compliance orders issued to major stationary sources.

Source	Location	Order No.	SIP regulation involved	Date of FEDERAL REGISTER proposal	Final compliance date
Anchor Hocking Corporation	Connellsville, PA		Section 129.52 of Title 25.	Sept. 25, 1984	Apr. 21, 1987

[FR Doc. 85-13859 Filed 6-7-85; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 50, No. 111
Monday, June 10, 1985

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 ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket Nos. CE-CP-SPRM-AR006, VA007, FL008, PA009, WI010, SC012, NM013, GA014, RI015, NH016, MA017, CA018, OR019, NY020, MO021, TX022, NJ023, IL024, UT025, IA026, WV027, MN028, WA029, KS030, HI031, TN032]

Energy Conservation Program for Consumer Products; State Petitions for Exemption From Federal Preemption of State Standards for Refrigerators and Refrigerator-Freezers, Freezers, Water Heaters, Room Air Conditioners, Central Air Conditioners and Furnaces

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice.

SUMMARY: The Department of Energy gives notice that it is extending the period for final action to either grant or deny the petitions received from 26 States requesting, in each case, that one or more State or local energy efficiency standards pertaining to refrigerators and refrigerator-freezers, freezers, water heaters, room air conditioners, central air conditioners and furnaces be exempted from Federal preemption. The Department is extending the period for such final action in the matter to July 5, 1985. The Department cites the large number and complexity of comments submitted, and the need for completing a substantive review of these comments as factors affecting the Department's timetable for this rulemaking action.

DATES: The Department of Energy is extending the period for final action to either grant or deny the petitions received from the 26 States to July 5, 1985.

ADDRESS: Copies of the State petitions, transcripts of public hearings, and public comments received may be obtained from the DOE Freedom of Information Reading Room:

U.S. Department of Energy, Freedom of Information, Public Reading Room, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6020.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-113, Room GF-217, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Room 6B-128, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9513.

SUPPLEMENTARY INFORMATION: Section 325 of Part B of Title III of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94-163), as amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619),[1] requires that the Department of Energy prescribe an energy efficiency standard for each of 13 major household appliances unless it determines, by rule, that a standard will not result in significant conservation of energy, is not technologically feasible, or is not economically justified.

Section 327(a)(2) of the Act provides that any Federal standard applicable under section 325 supersedes any non-identical State or local standard. Section 325(b) requires that a determination by DOE that no Federal energy efficiency standard for a particular product is warranted would also supersede any State or local energy efficiency standard. Section 327(b)(3), however, provides that a State may petition for, and DOE may issue, a rule exempting a State or local standard from Federal supersession. Section 327(b)(4) directs the Department to take final action to either grant or deny such a petition within 6 months of the date that the petition is filed, except that the Department may publish a notice in the **Federal Register** extending such period to a date certain. It is further required that such notice shall include the reasons for delay.

On December 22, 1982, DOE published a final rule in which DOE determined that energy efficiency standards for clothes dryers and kitchen ranges and ovens would not result in a significant conservation of energy and would not be economically justified. 47 FR 57198. (Referred to hereafter as the December 1982 rule.) The December 1982 rule also established procedures governing petitions to DOE by States to obtain exemption from preemption of State or local energy efficiency standards. These procedures, which are found at § 430.41(b)(2) of Subpart C of Part 430, Code of Federal Regulations,[2] require a State requesting exemption for an existing State standard to submit a notice of intent to petition within 60 days of publication of a final rule, and to submit a petition within 120 days of publication. Under these procedures, the applicable State standard remains in effect while DOE considers the petition. The procedures also allow a State to request exemption for a State standard after the 120-day period; however, in such a case, the applicable State standard is preempted by the Federal rule until DOE grants the petition.

Further, the December 1982 rule established Section 430.48(a) of the Regulation which restates the requirements of Section 327(b)(4) of the Act, previously discussed.

On August 30, 1983, DOE published a final rule with respect to refrigerators and refrigerator-freezers, freezers, water heaters, room air conditioners, central air conditioners, and furnaces. 48 FR 39376. (Referred to hereafter as the August 1983 rule.) For each product, except central air conditioners, DOE determined that an energy efficiency standard would not result in a significant conservation of energy and would not be economically justified. With respect to central air conditioners, DOE determined that an energy efficiency standard would result in a significant conservation of energy but would not be economically justified.

In response to the August 1983 rule, DOE has received petitions from 26 States requesting, in each case, that one or more State or local energy efficiency standards pertaining to refrigerators and

[1] Part B of Title III of EPCA, as amended by NECPA, 42 U.S.C. 6291-6309, is referred to in this notice as the "Act".

[2] Part 430 of the Code of Federal Regulations is referred to in this notice as the "Regulation."

refrigerator-freezers, freezers, water heaters, room air conditioners, central air conditioners, furnaces and kitchen ranges and ovens be exempted from Federal preemption.[3] The 26 States, and the products covered by each State's energy efficiency standards for which exemption from Federal preemption is sought, are identified in Table 1.

TABLE 1.—STATE PETITIONS

State	State code	Refrigerators and refrigerator-freezers	Freezer	Water heater	Room air conditioner	Central air conditioner	Furnace
Arkansas	AR006			X	X	X	X
Virginia	VA007			X	X	X	X
Florida	FL008			X	X	X	X
Pennsylvania	PA009			X	X	X	X
Wisconsin	WI010				X	X	X
South Carolina	SC012		X			X	X
New Mexico	NM013			X	X	X	X
Georgia	GA014			X		X	X
Rhode Island	RI015			X	X	X	X
New Hampshire	NH016			X	X	X	X
Massachusetts	MA017			X	X	X	X
California	CA018	X	X	X	X	X	X
Oregon	OR019			X	X	X	X
New York	NY020	X	X	X	X	X	X
Missouri	MO021			X	X	X	X
Texas	TX022			X	X	X	X
New Jersey	NJ023			X	X	X	X
Illinois	IL024	X	X	X	X	X	X
Utah	UT025			X	X	X	X
Iowa	IA026			X	X	X	X
West Virginia	WV027			X	X	X	X
Minnesota	MN028			X	X	X	X
Washington	WA029			X	X	X	X
Kansas	KS030					X	
Hawaii	HI031			X	X	X	X
Tennessee	TN032			X	X	X	X

Pursuant to Section 327(b)(4) of the Act and Section 430.48(a) of the Regulation, the Department of Energy gives notice that it is extending the period for final action to either grant or deny the petitions received from 26 States, in response to the August 1983 rule, requesting, in each case, that one or more State or local energy efficiency standards pertaining to refrigerators and refrigerator-freezers, freezers, water heaters, room air conditioners, central air conditioners and furnaces be exempt from Federal preemption. On August 14, 1984, DOE published a notice in the **Federal Register** extending the period for final action in this matter to May 13, 1985, and citing the complexity of processing the 26 State petitions as the factor affecting DOE's timetable for this action. 49 FR 32444. The Department is extending further the period for such final action in this matter to July 5, 1985.

The scope and complexity of many of the 340 comments submitted during the comment period and the need to conclude a substantive review and analysis of the comments has led DOE to extend the period for final action in this matter. Many of the comments included detailed product-by-product and/or State-by-State analyses of the petitions. Typically, the comments addressed the energy and cost savings attributed in the petitions to an applicable State or local energy efficiency standard for each product. Such comments also addressed economic impacts of standards, including business risk, product availability, manufacturer and consumer costs and export markets. The Department review of these comments is time consuming because of the amount and complexity of much of the information provided.

For the reasons cited above, and in consideration of the time and level of effort projected to conduct the rulemakings action on the matter of the 26 State petitions, the Department hereby gives notice that it is extending the period to July 5, 1985, for final action to either grant or deny the petitions received from 26 States requesting, in each case, that one or more State or local energy efficiency standard pertaining to refrigerators and refrigerator-freezers, freezers, water heaters, room air conditioners, central air conditioners and furnaces be exempted from Federal preemption.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

[3] Since filing its petition, the State of Rhode Island has repealed the State's intermittent ignition device requirements for furnaces and kitchen ranges and ovens. However, Rhode Island is retaining its petition for its furnace energy efficiency standard.

Issued in Washington, D.C., May 29, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 85-13846 Filed 6-7-85; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 85-AWA-21]

Proposed Alteration to Restricted Area R-2401 Fort Chaffee, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to move the northern boundary of R-2401 to safely enable military activity in the restricted area simultaneously with aircraft conducting instrument landing system (ILS) approaches to Fort Smith Municipal Airport.

DATES: Comments must be received on or before July 26, 1985.

ADDRESSES: Send comments on the proposal in triplicate to:

Director, FAA, Southwest Region, Attention: Manager, Air Traffic

Division, Docket No. 85–AWA–21, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

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: Ronald C. Montague, Airspace and Aeronautical Information Requirements Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–3656.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AWA–21." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 73.24 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to move the northern boundary of R–2401, located near Fort Smith, AR, approximately .5 nautical mile south. This change will provide aircraft conducting the Runway 25 instrument landing system (ILS) approach at Fort Smith Municipal Airport with the required separation from activities being conducted within R–2401 Fort Chaffee, AR. Section 73.24 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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, when promulgated, 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 73

Aviation safety.

The Proposed Amendment

PART 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.69.

2. By amending § 73.24 as follows:

R–2401 Fort Chaffee, AR—[Amended]

By removing the words "Beginning at lat. 35°18'35"N., long. 94°11'48"W.; to lat. 35°18'10"N., long. 94°16'30"W.;" and substituting the words "Beginning at lat. 35°18'17"N., long. 94°12'00"W.; to lat. 35°17'37"N., long. 94°17'23"W.;"

Issued in Washington, D.C., on June 4, 1985.

James Burns, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–13816 Filed 6–7–85; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9188]

Louisiana State Board of Dentistry; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subjected to final Commission approval, would require the Louisiana State Board of Dentistry (the Board), the sole licensing authority for dentists in Louisiana, among other things, to cease adopting or maintaining any rule, regulation, policy, or course of conduct that would tend to prevent or hinder the advertising or publishing of pricing discounts for dental products and services. The Board would also be barred from prohibiting any dentist or dental organization from advertising the availability of a discounted price; taking or threatening to take disciplinary action against advertisers of such prices, declaring the publication of discounted prices to be illegal, unethical, unprofessional or otherwise improper; and inducing or encouraging any individual or organization to take any of the actions prohibited by the order. The Board would be additionally required to distribute a copy of the order and an explanatory announcement to all dentists licensed to practice in Louisiana; and provide such material to all those applying for a license for a period of two years.

DATE: Comments must be received on or before August 9, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the

Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Arthur Lerner, FTC/P–1038, Washington, D.C. 20580. (202) 724–1341.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Advertising, Dentists, Trade practices.

Before Federal Trade Commission

[Docket No. 9188]

In the Matter of Louisiana State Board of Dentistry.

Agreement Containing Consent Order To Cease and Desist

The agreement herein, by and between the Louisiana State Board of Dentistry by its duly authorized officer, and its special counsel and co-counsel, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's rules governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Louisiana State Board of Dentistry is organized and exists under the laws of the State of Louisiana, with its principal office at Ten-O-One Howard Avenue, Suite 4308, New Orleans, Louisiana 70113. Respondent was created by the Louisiana Legislature in 1880 to govern and regulate the practice of dentistry in Louisiana; in 1976 Respondent was placed under the Louisiana Department of Health and Human Resources.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of Section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges.

3. Solely for purposes of this agreement and order and any subsequent action pursuant to the Federal Trade Commission Act for a violation of this order, Respondent admits all of the jurisdictional allegations set forth in the Commission's complaint in this proceeding.

4. This agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as allleged in the said copy of the complaint issued by the Commission.

5. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the other entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

6. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. It this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to Respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to Respondent's address as stated in this agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

I

For the purposes of this Order, the following definitions shall apply:

A. "Board" shall mean the Louisiana State Board of Dentistry, its officers, committees, representatives, agents, employees, and successors.

B. "Discounted price" shall mean a price offered or charged by a person or organization for any dental product or service that is less than the price the person or organization usually offers or charges for the product or service. Products or services expressly offered free of charge shall not be deemed to be offered at a "discounted price."

C. "Price advertising" shall mean advertising or publishing information about the price of any dental product or service. It shall not include express offers to provide a product or service free of charge.

D. "Disciplinary action" shall mean:

1. The revocation or suspension of, or refusal to grant, a license to practice dentistry in Louisiana, or the imposition of a reprimand, fine, probation, or other penalty or condition; or

2. The initiation of an administration, criminal, or civil proceeding.

II

It is ordered that the Board, in or in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, shall cease and desist from, directly or indirectly, or through any device:

A. Prohibiting, restricting, impeding, or discouraging any person or organization from advertising the availability of, offering, or publishing a discounted price, or otherwise engaging in price advertising. Such conduct includes, but is not limited to:

1. Adopting or maintaining any rule, regulation, policy, or course of conduct that prohibits or seeks to prohibit any person or organization from advertising the availability of, offering, or publishing discounted prices;

2. Taking or threatening to take any disciplinary action against any person or organization for advertising the

availability of, offering, or publishing discounted prices; and

3. Declaring it to be an illegal, unethical, unprofessional, or otherwise improper practice for any person or organization to advertise the availability of, offer, or publish discounted prices; and

B. Inducing, urging, or encouraging any dentist, group of dentists, or dental association to take any of the actions prohibited by this Part.

Provided that nothing in this Order shall prevent the Board from adopting and enforcing reasonable rules, including reasonable affirmative disclosure requirements, or taking disciplinary or other action, to prevent advertising theat the Board reasonably believes to be fraudulent, false, deceptive, or misleading within the meaning of Louisiana Revised Statutes §§ 37775(3), 37776(12), 37776(16) or any Louisiana statutory provision governing dental advertising enated subsequent to the date this Order becomes final, as limited by the First and Fourteenth Amendments to the Untied States Constitution.

In particular, nothing in this Order shall prevent the Board from finding to be fraudulent, false, deceptive, or misleading:

a. Advertising by a dentist in which a price is represented to be a discounted price when in fact it is the customary or usual charged by that dentist;

b. Advertising by a dentist of a discounted price for a dental service and failing to provide the same quality and components of service at the discounted price that are normally provided at the regular, nondiscounted price for that service; and

c. A dentist's failure to disclose the expiration date of an advertised discount offer if the dentist fails to make the discounted price available for a reasonble period of time from publication of the offer.

III

It is further ordered that this Order shall not be construed to prevent the Board from petitioning for or seeking legislation concerning the practice of dentistry as defined in Louisiana Revised Statutes §§ 37:751 *et seq.*

It is further ordered that the Board shall:

A. Distribute by mail an announcement in the form shown in Appendix A, and a copy of this Order:

1. To each person licensed to practice dentistry in Louisiana, and to each person who has at the time this Order becomes final a pending application for such a license, within sixty (60) days after this Order becomes final; and

2. For a period of two (2) years after this Order becomes final, to each person who hereafter applies for a license to practice dentistry in Louisiana, within sixty (60) days after he or she applies for the license;

B. Within one hundred twenty (120) days after this Order becomes final, submit a written report to the Federal Trade Commission setting forth in detail the manner and form in which the Board has complied and is complying with this Order;

C. For a period of five (5) years after this Order becomes final, maintain and make available to the Federal Trade Commission staff for inspection and copying, upon reasonable notice, records adequate to describe in detail any action taken in connection with any activity covered by Part II of this Order, including records of rulemaking and enforcement proceedings, and written communications, and any summaries of oral communications, to or from the Board regarding the advertising of the availability of, or the offering or publishing of, discounted prices, or other price advertising.

D. In addition to the report required by Part IV.B., at such times as the Commission may by written notice to the Board reasonably require, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which the Board has complied and is complying with this Order; and

E. Notify the Federal Trade Commission at least thirty (30) days in advance if possible, or otherwise as soon as possible, of any change in the Board's authority to regulate the practice of dentistry in Louisiana that may affect compliance obligations arising out of this Order, such as the complete or partial elimination of that authority, the complete or partial assumption of that authority by another governmental entity, or the dissolution of the Board.

Appendix A—Announcement

[Date]

As you may be aware, the Louisiana State Board of Dentistry has entered into a consent agreement with the Federal Trade Commission that became final on [date]. The order issued pursuant to the consent agreement provides that the Board may not prohibit dentists from advertising the availability of discounts from their usual fees, or otherwise restrict price advertising for dental services or products, except as provided below. In particular, with respect to advertising of discounts, the Board may not (1) adopt rules, regulations, or policies prohibiting the advertising of discounted prices for dental care, (2) take disciplinary action (such as the imposition of a fine, or the suspension or revocation of a dental license) or threaten disciplinary action against dentists who so advertise, or (3) declare it to be illegal or unethical for dentists to so advertise, except as provided below. The Board is also prohibited from encouraging any dentist or dental association to take actions that the order prohibits the Board from taking.

The Order does not affect the Board's authority to prohibit, and discipline dentists for, (1) advertising free dental services or examinations as an inducement to secure dental patronage (which is expressly prohibited by Louisiana law), or (2) advertising that is fraudulent, false, deceptive, or misleading. Furthermore, the order does not affect the Board's authority to adopt and enforce reasonable affirmative disclosure requirements to prevent advertising that the Board reasonably believes is fraudulent, false, deceptive, or misleading.

In particular, the order provides that the Board may find to be fraudulent, false, deceptive, or misleading:

a. Advertising by a dentist in which a price is represented to be a discounted price when in fact it is the customary or usual price charged by that dentist;

b. Advertising by a dentist of a discounted price for a dental service and failing to provide the same quality and components of service at the discounted price that are normally provided at the regular, nondiscounted price for that service; and

c. A dentist's failure to disclose the expiration date of an advertised discount offer if the dentist fails to make the discounted price available for a reasonable period of time from publication of the offer.

For more specific information, you should refer to the attached FTC order.

President, Louisiana State Board of Dentistry.

LOUISIANA STATE BOARD OF DENTISTRY DOCKET NO. 9188

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Louisiana State Board of Dentistry.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received

and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Description of the Complaint

The Commission issued a complaint against the Louisiana State Board of Dentistry ("the Board") on October 29, 1984. The complaint charged the Board with unlawfully prohibiting dentists from adverstising discounts from their usual fees, in violation of Section 5 of the Federal Trade Commission Act. The complaint further alleged that the effect of the Board's conduct has been to suppress competition in the sale of dental services in Louisiana.

The Board is the state licensing authority for dentists in Louisiana. Aside from one dental hygienist, who by law may vote only on matters pertaining to the profession of dental hygiene, the Board is composed entirely of dentists who are engaged in the private practice of dentistry. Most of these dentists, the complaint states, are nominated to serve on the Board by the dentists in their local congressional districts. The rest are appointed by the Governor as at-large members. According to the complaint, the dentists serving on the Board compete with the dentists they regulate.

The complaint alleged that the Board, since at least February 1982, has prohibited advertising of discounts without regard to the truth or falsity of the advertising, and has coerced individual dentists into abandoning their efforts to advertise truthful information about discounts from their usual fees. The complaint cited as an example a group of dentists who advertised a "Back to School Special" offering cleaning, examination, fluoride treatment, and bitewing x-rays for a specified price. The complaint also alleged that the Board acted to prohibit advertising of discounted prices even though it knew that it was unconstitutional for the Board to restrict truthful advertising of the cost and availability of routine dental services.

The Board's restriction of discount advertising is subject to federal antitrust law, the complaint charged, because Lousisiana law does not establish a state policy of restricting truthful advertising of discounted prices. According to the complaint, the state of Louisiana does not ban truthful advertising by dentists, and state laws now in effect do not prohibit dentists from offering or truthfully advertising discounts from their usual fees. The complaint charged the Board based its restrictions on a Louisiana law that declares that advertising free dental services "as an inducement to secure dental patronage" to be unprofessional conduct.

The complaint alleged that the Board's conduct injured competition and consumers in several ways. First, it has restrained price competition among dentists. Second, it has deprived consumers of the benefits of vigorous price competition among dentists, causing some consumers to pay higher prices for dental services and others to delay or forgo needed dental care. Third, it has prevented dentists from disseminating truthful information about their fees and restricted their ability to provide services through innovative dental care financing arrangements that involve discounting of fees. Finally, it has deprived consumers of valuable information about dentists' fees, including the identities of dentists who offer special discounts to the elderly or others.

The Proposed Consent Order

The consent order is designed to remedy the violation charged in the Commission's complaint, and to prevent the Board from engaging in similar allegedly illegal acts and practices in the future. The proposed order is intended to ensure that the Board ceases all conduct prohibiting or discouraging dentists from truthfully advertising discounts or other information about their fees. It is also intended to ensure that dentists in Louisiana are made aware that advertising of discounts is permissible.

Part II of the proposed order prevents the Board from prohibiting, restricting, impeding, or discouraging any person or organization from advertising the availability of, offering, or publishing a "discounted price," which is defined in Part I of the order to be a price for a dental product or service that is less than that usually offered or charged by the person or organization for the product or service. The Board is also prohibited from restricting any person or organization from engaging in other price advertising.

Both "discounted price" and "price advertising" are defined in Part I of the proposed order to exclude express offers to provide a product or service free of charge. This exclusion is intended to leave untouched the Board's authority to enforce a Louisiana statutory provision, Louisiana Revised Statutes § 37:775(7), that defines "the advertising of any free dental services as an inducement to secure dental patronage" to be unprofessional conduct. In so doing, the Commission expresses no opinion as to the constitutionality of this statutory provision.

Part II of the proposed order also provides that nothing in the order would prohibit the Board from taking action against advertising that it reasonably believes to be fraudulent, false, deceptive, or misleading within the meaning of certain Louisiana statutory provisions pertaining to dental advertising, provided that such action is consistent with the First and Fourteenth Amendments to the United States Constitution. In addition, the proposed order declares that the Board is not prevented from finding the following to be false, fraudulent, deceptive, or misleading:

a. Advertising by a dentist in which a price is represented to be a discounted price when in fact it is the customary or usual price charged by that dentist;

b. Advertising by a dentist of a discounted price for a dental service and failing to provide the same quality and components of service at the discounted price that are normally provided at the regular, nondiscounted price for that serivce; and

c. A dentist's failure to disclose the expiration date of an advertised discount offer if the dentist fails to make the discounted price available for a reasonable period of time from publication of the offer.

Part III provides that nothing in the proposed order prevents the Board from seeking legislation concerning the practice of dentistry.

Part IV of the proposed order would require the Board to distribute a copy of the order and an explanatory announcement to all licensed dentists in Louisiana, and, for a period of two years, to all applicants for a dental license. The text of the announcement is contained in Appendix A of the proposed order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or modify in any way its terms.

Emily H. Rock,

Secretary.

[FR Doc. 85-13883 Filed 6-7-85; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[File No. 842 3123]

Montana Board of Optometrists; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require the Montana Board of Optometrists (the Board), among other things, to cease adopting or maintaining any rule, regulation, policy or course of conduct that has the effect of prohibiting, restricting or discouraging any qualified person from advertising price-related terms or claims of professional superiority; and declaring such advertising to be illegal, unethical, or unprofessional. The Board would be barred from taking or threatening disciplinary action against any individual or organization that advertises price-related terms and claims of professional superiority; and from inducing or assisting others to take any of the prohibited actions. The order would further require that the Board timely distribute a copy of the order together with an explanatory announcement to each licensed optometrist in the state; and to provide a copy to all those individual who apply for a license, for a period of five years.

DATE: Comments must be received on or before August 9, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Cynthia Wicker, FTC/H-292, Washington, D.C. 20580. (202) 423-5607.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34, notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Advertising, Optometrists, Trade practices.

Before the Federal Trade Commission

[File No. 842 3123]

In the Matter of Montana Board of Optometrists.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Montana Board of Optometrists and it now appearing that the Montana Board of Optometrists, hereinafter sometimes referred to as Proposed Respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between the Montana Board of Optometrists by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission as follows:

1. Proposed Respondent is organized, exists and transacts business under the laws of the State of Montana, with its principal office and place of business located at Department of Commerce, 1424 9th Avenue, Helena, Montana 59620-0407.

2. Proposed Respondent admits all of the jurisdictional allegations set forth in the draft of the attached complaint.

3. Proposed Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission both it and the draft complaint will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft of the attached complaint.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, in disposition of the proceeding, and without further notice to Proposed Respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist; and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute, as other orders. The order shall become final upon service. Delivery of the complaint and decision containing the order agreed upon, by the U.S. Postal Service, to Proposed Respondent's address as stated in this agreement shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed Respondent has read the proposed complaint and order. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

For the purposes of this Order, the following definitions shall apply:

A. "Board" shall mean the Montana Board of Optometrists, its successors and assigns.

B. "Disciplinary action" shall mean:

1. The refusal to grant, or the restriction, revocation or suspension of, a license to practice optometry in Montana; the refusal to admit a person to examination for a license to practice optometry; the issuance of a formal or informal warning, reprimand, censure, or cease and desist order against any person or organization; or the imposition of a fine, probation, or other penalty or condition; or

2. The initiation of an administrative, criminal, or civil court proceeding against any person or organization.

C. "Price-related terms" are terms that refer to:

1. Free eye examinations;

2. Down payments, or any stipulated amount of money as a down payment, or any indication that no down payment is required;

3. Periodic payments, or any stipulated amount of money as periodic payments;

4. Credit, installment, or any other term relating to deferred payments.

D. "Professional superiority" shall mean any truthful claim of specialization, skill, equipment, treatment, training, experience or service offered, or any other information that would tend to distinguish an advertiser's practice from other ophthalmic practices.

I

It is ordered that the Montana Board of Optometrists, its officers, agents, committees, representatives, employees, successors, and assigns, directly or indirectly, through any device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Prohibiting, restricting, impeding, or discouraging any person from advertising or publishing the prices, terms or conditions of sale for any ophthalmic service or product offered for sale or made available by any person or organization that may lawfully offer the service or product. Such actions include, but are not limited to:

1. Adopting or maintaining any rule, regulation, policy, or course of conduct that has the purpose or effect of prohibiting, restricting, or discouraging any person from advertising price-related terms or claims of professional superiority;

2. Taking or threatening to take any disciplinary action against any person or organization for advertising price-related terms or claims of professional superiority;

3. Declaring it to be an illegal, unethical, unprofessional, or otherwise improper practice for any person or organization to advertise price-related terms or claims of professional superiority; and

B. Inducing, urging, encouraging or assisting any optometrist or any optometric association, group of optometrists, hospital, insurance carrier or any other non-governmental organization to take any of the actions prohibited by this part.

Provided that, nothing contained in this part shall prohibit the Board from formulating, adopting, disseminating and enforcing reasonable rules or taking disciplinary or other action to prohibit: (1) Advertising that uses the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist; or (2) advertising in a manner that the Board reasonably believes is ambiguous or misleading within the meaning of Mont. Code Ann. § 37-10-311(2) (h) & (i).

Provided further that, this Order shall not be construed to prevent the Board from petitioning for or seeking legislation concerning the practice of optometry.

II

It is further ordered that the Board shall:

A. Distribute by first-class mail a copy of the announcement attached hereto as Appendix A and a copy of this Order:

1. To each person presently licensed to practice optometry in Montana, and to each person who has on the date of service of this Order a pending application for such a license, within thirty (30) days after the date of service of this Order; and

2. For a period of five (5) years after the date of service of this Order, to each person who hereafter applies for a license to practice optometry in Montana, within thirty (30) days after such person applies for the license;

B. For a period of five (5) years after the date of service of this Order, maintain and upon request make available to the Federal Trade Commission for inspection and copying, copies of all records relating to advertising, including but not limited to, written communications, and any summaries of oral communications to or from the Board regarding the offering, publishing or advertising on information about ophthalmic services;

C. Notify the Federal Trade Commission at least thirty (30) days in advance if possible, or otherwise as soon as possible, of any change in the Board's authority to regulate the practive of optometry in Montana that may affect compliance obligations arising out of this Order, such as the complete or partial elimination of that authority, the complete or partial assumption of that authority by another governmental entity, or the dissolution of the Board;

D. Within sixty (60) days after the date of service of this Order, submit to the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which the Board has complied with this Order.

Appendix A—Announcement

[Date]

As you may be aware, the Montana Board of Optometrists has entered into a consent agreement with the Federal Trade Commission that became final on [date]. The order issued pursuant to the consent agreement provides that the Board may not prohibit optometrists from truthfully advertising their services. The Board may not (1) adopt or maintain rules, regulations, or policies that prohibit truthful advertising of price-related terms and claims of professional superiority with respect to the sale of optometric services, (2) take disciplinary action (such as the suspension of revocation of a certificate of license) or threaten disciplinary action against any person or organization so advertising or (3) declare it to be illegal or unethical for persons to so advertise. The Board is also prohibited from encouraging any optometrist or any professional group or association to take actions that the order prohibits the Board from taking. The order does not affect the Board's authority to prohibit and discipline licensees for advertising that is ambiguous or misleading.

For more specific information, you should refer to the FTC order itself. A copy of the order is enclosed. Further information may be obtained from the FTC by calling Jack L. Young at (202) 523-3596.

[Title]

Montana Board of Optometrists.

MONTANA BOARD OF OPTOMETRISTS FILE NO. 842 3123

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Montana Board of Optometrists (the "Board").

The proposed consent order has been placed on the public record for sixty (60) days to allow interested persons to comment. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Description of the Complaint

A complaint prepared for issuance by the Commission along with the proposed order alleges that:

The Board is subject to the Commission's jurisdiction pursuant to section 5 of the Federal Trade Commission Act.

The Board has acted as a combination or conspiracy of its members or combined or conspired with others to unreasonably restrain competition among optometrists in Montana by

adopting rules prohibiting the dissemination of truthful, nondeceptive information about ophthalmic goods and services, and by coercing individuals to abandon their efforts to advertise truthfully the nature and quality of ophthalmic goods and services. These activities constitute unfair methods of competition and unfair acts or practices in violation of section 5 of the Federal Trade Commission Act.

The Board is organized and exists under the laws of the State of Montana, and is the sole licensing authority for optometrists in that state. It is responsible for establishing standards and rules governing the conduct of optometrists in Montana, so long as such standards and rules are not inconsistent with state law. The Board is authorized to subject persons who violate its rules, or the state laws relating to optometry to disciplinary actions ranging from warnings to revocation of their licenses.

The Board is controlled by optometrists who by law must be actively engaged in the exclusive practice of optometry whild serving their membership terms. Except to the extent that competition is restrained as alleged in the complaint, optometrists compete with one another and the Board's optometrist members compete with the optometrists they regulate.

The Board's anticompetitive practices are at variance with state policy, since the State of Montana has a clearly articulated policy protecting the truthful, nondeceptive advertising of optometric goods and service. In 1980 the Office of the Legislative Auditor conducted a review of the Board pursuant to the Montana Sunset Law. The Auditor concluded that a then extant Montana statute prohibiting the advertising of prices or price terms appeared to be unconstitutional. The Montana Legislature repealed the statute in 1981. The current statute prohibits ambiguous or misleading advertising and the use in advertising of the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist. The statute specifically does not prohibit legitimate or truthful advertising by an optometrist. State law limits rulemaking authority to rules not inconsistent with the provisions of the statute.

In furtherance of the combination or conspiracy, and in direct violation of the state policy favoring truthful advertising, the Board adopted rules that prohibit the advertising of free eye examinations, down payments, credit and installment terms, and claims of professional superiority or of having equipment others cannot obtain.

The Board issued at least two cease and desist letters citing optometric practices for violating a Board rule forbidding optometric advertisements containing the terms "Contact Lens Clinic" and "Vision Center" after that rule had been repealed.

The Board has continued its course of conduct despite being advised by the Montana Attorney General in 1979 that the regulations described in the complaint violate state and federal antitrust laws and should be repealed.

As a result of the Board's restraints on advertising, consumers have been deprived of the benefits of vigorous competition and of truthful information about free eye examinations, credit and payment terms, and differences in the skills, training and experience of optometrists. Optometrists have been prevented from competing on the basis of making this information available to consumers through advertising.

Description of the Proposed Consent Order

The proposed order would require the Board to cease and desist from prohibiting, restricting, impeding or discouraging any person from advertising the prices, terms or conditions of sale for any ophthalmic service or product offered for sale or made available by any person or organization lawfully offering the service or product. Thus, the Board would have to repeal its rules prohibiting the advertising of pricing terms and superiority claims, and would have to refrain from adopting any other rule or policy that prohibits or discourages such advertising. The order would further prohibit the Board from inducing, urging, encouraging or assisting others to take any of the actions prohibited by the order.

The order provides, however, that the Board may adopt and enforce reasonable rules and take disciplinary action to prohibit advertising that uses the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist, and advertising that the Board reasonably believes is ambiguous or misleading within the meaning of Montana State Law. The order also provides that the Board is entitled to petition for legislation concerning the practice of optometry.

The proposed order would require that the Board distribute a copy of the order and an announcement notifying all licensees, as well as all persons with applications pending, of the existence and terms of the consent agreement within (30) days after the order becomes final. The Board would be required to send the same notice to each person who applied for a license for a period of five (5) years thereafter. To ensure that the proposed order is obeyed, the Board would be required within sixty (60) days after the order becomes final to file a written report with the Commission setting forth the manner and form of its compliance. The Board would also be required, for a period of five (5) years, to make its records available to the Commission, and to notify the Commission within thirty (30) days of any change in the Board's authority to regulate the practice of optometry that might affect its ability to comply with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to in any way modify their terms.

Emily H. Rock,

Secretary.

[FR Doc. 85-13884 Filed 6-7-85; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[File No. 832 3031]

Wein Products, Inc., et al.; Proposed Consent Agreement with Analysis To Aid Public Comment; Correction

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement; Correction.

SUMMARY: This document corrects a Commission document previously published in the **Federal Register** on Monday, June 3, 1985 (50 FR 23313, FR Doc. 85-13141). The end of the comment period was incorrect. Comments will be received until Aug. 2, 1985.

FOR FURTHER INFORMATION CONTACT: Harrison J. Sheppard, San Francisco Regional Office, Federal Trade Commission, 450 Golden Gate Ave., San Francisco, Calif. 94102. (415) 556-1270.

Emily H. Rock,

Secretary.

[FR Doc. 85-13885 Filed 6-7-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 355

[Docket No. 50448-5048]

Countervailing Duties

AGENCY: International Trade Administration, Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: The International Trade Administration proposes to revise its regulations to implement the provisions in Title VI of the Trade and Tariff Act of 1984 concerning countervailing duties and modify in other respects provisions in the current version of Part 355. The modifications are intended to improve administration of the countervailing duty provisions of the Tariff Act of 1930.

DATES: Written comments must be received not later than August 9, 1985.

ADDRESS: Address written comments to Alan F. Holmer, Deputy Assistant Secretary for Import Administration, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Assistant General Counsel for Import Administration, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230. (202) 377-1411.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291. The International Trade Administration ("ITA") has determined that this proposed revision of the current countervailing duty regulations in 19 Code of Federal Regulations ("CFR") Part 355 is not a major rule as defined in section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981) because it will not: (1) Have a major monetary effect on the economy; (2) result in a major increase in costs or prices; or (3) have a significant adverse effect on competition (domestic or foreign), employment, investment, productivity, or innovation.

Paperwork Reduction Act. The information collection requirement contained in 19 CFR Part 355 has been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and has been assigned OMB control number 0625-0148.

Regulatory Flexibility Act. The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small business entities because, to the extent it changes existing practices, the proposed rule simply improves the administration of the countervailing duty provisions of the Tariff Act of 1930, as amended. As a result, an initial Regulatory Flexibility Analysis was not prepared.

Background

The current countervailing duty regulations in Subparts A, B, and C of 19 CFR Part 355 (45 FR 4932; January 22, 1980, as amended by 49 FR 22466; May 30, 1984) are based on Subtitles A, C, and D of Title I of the Trade Agreements Act of 1979 ("Trade Agreements Act"), which amended section 303 and Title VII of the Tariff Act of 1930 (19 U.S.C. Subtitle IV, Parts I, III and IV) ("Tariff Act"). Title VI of the Trade and Tariff Act of 1984 (Pub. L. 98-573; October 30, 1984) ("1984 Act") amended those provisions, effective on the dates specified in the interim-final rule adding a new Subpart E to 19 CFR Part 355 (50 FR 5746; February 12, 1985). The current regulations relating to subsidies on quota cheese in Subpart D of 19 CFR Part 355 (45 FR 74469; November 10, 1980) are based on section 702 of the Trade Agreements Act (19 U.S.C. 1202 note).

Some of the proposed changes to the current countervailing duty regulations are necessary to implement the amendments made by the 1984 Act. Other proposed changes: (1) Incorporate existing administrative interpretations and practices, not currently stated in the regulations, that will continue under the amended statute; (2) improve administrative efficiency in countervailing duty proceedings; or (3) simplify the language of existing regulations. The proposed text of Part 355 would replace the entire current text of Part 355.

Grammatical changes throuhout the text of the proposed regulations are the use of the word "Secretary" in place of "administering authority," use of the active rather than passive voice, and simplification of sentence structure. When possible, cross references to other sections of this part replace references to the Tariff Act.

Other changes in the regulations incorporated in this proposed rule are described in the following section-by-section analysis.

1. *Section 355.1.* This section corresponds to section 355.0 of the current regulation. The paragraph on environmental impact statements is deleted. References to section 702 of the Trade Agreements Act and to Title VI of the 1984 Act are added.

2. *Section 355.2.* This section corresponds to §§ 355.6 and 355.7 of the current regulation.

Subsections (a) through (f) are revised for clarity.

Subsection (g) is a new definition of "factual information," a term used throughout the proposed rule, especially in §355.31. Factual information and argument (written and oral) describe the submissions which may be made to the Department during a proceeding.

The current definition of "industry" is clarified in subsection (h) of the proposed rule to highlight those aspects of the statutory definition (section 771(4) of the Tariff Act) regarding whether the petitioner has filed "on behalf of" an industry, as required by section 702(b)(1) of the Tariff Act. The modification does not change current practice. The Department would consult with the International Trade Commission on the decision concerning the "like product."

In subsection (i) of the proposed rule, paragraph (6) is added to the definition of "interested party" to include coalitions of firms, unions, or trade associations that have individual standing, as defined in paragraphs (3), (4), or (5). The change conforms the definition to section 771(9) of the Tariff Act, as amended by section 612(a) of the 1984 Act. The word "seller" replaces "wholesaler" in paragraph (3) to clarify that the provision includes all sellers (except retail sellers) rather than only selers at the wholesale level of trade. This change is consistent with current practice. Otherwise, the definition of "interested party" is changed for clarity only.

The definition of "investigation", in subsection (j), is revised to include investigations that begin with a notice of continuation of an investigation under § 355.19 after the Secretary finds that a suspension agreement has been violated. It also includes a reference to investigations that end with a notice of suspension of investigation.

Subsection (k), which is new, is a definition of "the merchandise." The definition avoids continual repetition throughout the proposed regulations to "the class or kind of merchandise subject to the proceeding which has either been imported or sold, or is likely to be sold, for importation."

The definition of "party to the proceeding" in subsection (l) requires,

instead of the current written request, that an interested party actively participate in the particular segment of the proceeding that is judicially reviewable. In order to participate in litigation under section 516A(d) of the Tariff Act, an interested party must be a party to the proceeding. Active participation in the proceeding is a reasonable prerequisite for the right to participate in judicial review of the results.

The definition of "proceeding" in subsection (n) is revised to cover administrative reviews at the direction of the President, under § 355.22(i), and to cover dismissal of a petition prior to initiation of an investigation, rescission of an initiation, and termination of a suspended investigation.

The definition of "order" in § 355.6 of the current regulations is deleted, because orders are defined and described in § 355.21. The definition of "determination" in § 355.6 of the current regulation is deleted because it is not needed.

The new definitions of "producer" and "production" (subsection (o)) are intended to simplify regulatory language by substituting a single word for the phrase "manufacturer or producer" or "manufacture and production" wherever it appears.

Subsection (p) of the proposed rule includes for the first time definitions of "sale" and "likely sale." The definition of "likely sale" implements sections 701(a) and 705(b)(1) of the Tariff Act, as amended by section 602(a) of the 1984 Act. Only in the event that no sale has been consummated will the Secretary consider likely sales, as defined in this subsection. "Likely sale" means an offer that the seller has made irrevocable for a period of time. The definition of "sale" is based on current practice. A "sale" includes a contract to sell, even though during the proceeding the contract may be contingent on a future even or occurence, may not have been reduced to writing, or may not yet be complete in every detail.

The definition of "Secretary" in subsection (q) is amended to summarize current delegations of authority from the Secretary of Commerce and thereby clarify the references to "Secretary" throughout the regulations.

3. *Section 355.3.* Sections 355.15 through 355.21 of the current regulation are completely reorganized and modified, as explained below. Generally, the regulatory procedures for release of proprietary information under administrative protective order are simplified, in accordance with the amendments to section 777 of the Tariff Act made by the 1984 Act.

Rewritten under a new section title, § 355.3 describes in subsections (a) and (b) the two types of records of the proceeding, the official record and the public record. For the purposes of judicial review, the official record under section 516A(b)(2) of the Tariff Act is the official record of the judicially reviewable segment of a proceeding. For example, the record we would file with the court in the event of a judicial challenge to the final results of administrative review issued by the Secretary under § 355.41(c) are the documents pertinent to that particular administrative review. Unless those documents had been used by the Department in the later review, we would not include documents pertinent to an earlier administrative review, or to the investigation, unless those documents had been resubmitted during the review being challenged, in accordance with these proposed rules, and were pertinent to the review. This reflects our current practice. The public record is available for inspection and copying, as described in the proposed rule.

Subsection (c) of the current regulation, concerning reports on the progress of investigation, is deleted because it is unnecessary. No report has ever been requested. The public file provides an accurate record of the progress of the investigation.

Subsection (c) of the revised regulation retains the basic requirement for protection of the record that is stated in subsection (d) of the current regulation. Submission of the official record to the court for the purpose of judicial review is addressed in section 516A(b)(2) of the Tariff Act and in court rules. Reference to submission to the court is deleted in the revised version of this subsection, because these rules do not address procedures for judicial review.

4. *Section 355.4.* Section 355.4 defines each of the four types of information that may be contained in the official file of the proceeding: public, proprietary, privileged, and classified. The term "proprietary" is used throughout the revised regulation in place of the term "confidential" (the term used in the current regulations) to describe the type of business information defined in paragraph (b)(2) of this subsection. "Proprietary" more accurately describes this category of information and eliminates possible confusion with the national security classification of "confidential."

Subsection (a) of the proposed rule generally tracks the substance of the current regulation in § 355.19(b). Written argument, which is described in § 355.39 of the proposed rule, normally is public rather than proprietary.

Subsection (b) of the proposed revision provides a more specific and complete list of information normally considered proprietary than does § 355.19(c) of the current regulation. The list reflects the agency's experience with the various types of proprietary and other information submitted in proceedings. We have found that many of the disagreements over disclosure may be traced to the inappropriate designation of information as proprietary.

Subsections (c) and (d) of the proposed revision are new, although they do not change Department practice. They are intended to complete the definition of the types of information in the official record. Factual information does not acquire national security "classified" status merely because a foreign government submits it to the Secretary. The Department will continue its practice of ensuring that transmission of information through a foreign government is not used to avoid disclosure of publicly available information or of proprietary business information. Of course, during the Secretary's consideration of the request, documents submitted by a government with a request that it be held in confidence will be accorded such treatment, consistent with Executive Order 12356.

5. *Section 355.5.* This section of the proposed rule corresponds to § 355.44 of the current regulation. The proposed rule provides more specific information about the location of the subsidy library.

6. *Section 355.6.* This section, which corresponds to § 355.51 of the current regulation, concerns the effective dates of amendments to the Tariff Act made by the 1984 Act. Section 355.51 was published as an interim final rule on February 12, 1985 (50 FR 5748).

7. *Section 355.11.* This section corresponds to section 355.25 of the current regulation. By use of the term "the merchandise," subsection (a) and later sections of the proposed rules incorporate the concept of likely sales for importation that was added explicitly to section 701(a) of the Tariff Act by section 602 of the 1984 Act. See preamble comment on § 355.2(k). As under § 355.27(b) of the current regulation, subsection (a)(1) of the proposed rule provides for consultation with the Commission on the description of the merchandise. Commission access to information is government by section 355.32(f)(3) of the proposed rule.

8. *Section 355.12.* This section corresponds to § 355.26 of the current

regulation. Subsection (a) of the proposed rule states the general requirements for filing a petition found in § 355.26 of the current regulation. Coalitions of domestic interested parties have the ability to file petitions, consistent with section 612(a)(3) of the 1984 Act. See H.R. Rep. No 98–1156, 98th Cong., 2d Sess. at 175 (1984) ("Conference Report").

Subsection (b) of the proposed rule, entitled "Contents of Petition," corresponds to subsection (a)(1) through (a)(13) of § 355.26 of the current regulation, with some modifications. Subsection (b)(2) of the proposed rule combines subsection (a)(2) and (a)(11) of the current regulation.

Subsection (b)(4) clarifies that the petitioner's description of the merchandise does not necessarily determine the scope of an investigation initiated under § 355.13. In some instances the Secretary may expand or contract the class of kind of merchandise under investigation to conduct an adequate investigation.

Subsection (b)(6) requires reasonable quantification of the share of total exports to the United States accounted for by each allegedly subsidized exporter or producer. This change is consistent with current practice.

Subsection (b)(7) highlights the requirement that petitioner document allegations about subsidy programs. Such documentation helps the Department to judge quickly the adequacy of a petition and to prepare the questionnaires referred to in § 355.31 of the proposed rule.

Subsection (b)(8), which is new, implements section 771A of the Tariff Act, as added by section 613 of the 1984 Act. The subsection sets out petition requirements concerning upstream subsidies.

Subsection (b)(9) of the proposed rule combines without substantive changes subsections (a)(8) and (a)(9) of the current regulation.

Subsection (b)(10) reflects the new definition of likely sales for importation. See preamble comment on § 355.2(p).

The requirement at the end of subsection (a) of the current regulation, concerning forms for submission of petitions is deleted. The only form for petitions is stated in subsection (b) of the proposed rule.

The requirement in subsection (b) of the current regulation, concerning English translations, appears in § 355.31(f) of the proposed rule.

Subsections (c) and (e) of the proposed rule clarify the simultaneous filing requirement for petitions and amendments to petitions contained in subsections (c) and (e) of the current regulation. In addition to Title VII investigations, under section 303 of the Tariff Act the Commission must under certain conditions make injury determinations in investigations involving duty-free merchandise from non-agreement countries. Subsection (e) of the proposed rule also includes a filing certification requirement (as does subsection (c)) and a reference to the time limits in § 355.31.

Subsection (d) is revised for clarity.

Subsection (f) of the proposed rule corresponds to portions of subsection (a) and to subsection (f) of the current regulation. It cross-references the requirements of subsections (d) and (e) of § 355.31 concerning where to file, time of delivery, format, and number of copies. Section 355.31(d) also states the time at which the Department considers a document filed.

Subsection (g) is revised for clarity.

Subsection (h) is added to implement section 702(b)(3) of the Tariff Act, as added by section 650 of Pub. L. 98–181 (November 30, 1983), concerning petitions based solely on alleged derogation of an international undertaking on official export credits. Under this provision the Secretary of the Treasury determines, in consultation with the Secretary, the existence and estimated value of the alleged derogation within 20 days after the petitioner files the petition. Given the short deadline, the simultaneous filing requirement stated in subsection (h) of the proposed rule is a reasonable means of implementing the statutory notification requirement. We not that the determination regarding derogation does not constitute the subsidy determination required by this Part.

Subsection (i)(1), which is new, implements section 221 of the 1984 Act, which explicitly requires the Department to provide technical assistance to eligible small businesses in the preparation and filing of petitions under this section. Subsection (i)(2) is revised to identify specifically the person to contact for additional information on filing any petition.

Subsection (j), which is new, limits communication, before the Secretary determines whether or not to initiate an investigation under § 355.13, between the Secretary and persons that might be respondents in the investigation. The only exception to this limitation on pre-initiation communication with potential respondents is stated in subsection (j)(2), which provides that the Secretary may consult with the representatives of the affected country to the extent required by the international obligations of the United States. The subsection is consistent with the decision of the Court of Appeals for the Federal Circuit in *United States* v. *Roses, Inc.*, 706 F.2d 1563 (1983).

9. *Section 355.13.* This section corresponds to § 355.27 of the current regulation. Subsection (a) of the proposed rule corresponds to subsection (a) and portions of subsection (b) of the current regulation. The last sentence of subsection (a) of the current regulation is now incorporated in § 353.31(d) of the proposed rule.

Subsection (b) of the proposed rule conforms the contents of the notice of initiation published under this section to that for notices of self-initiation under § 355.11. It also limits the requirement for special notice to the Commission to those investigations requiring a determination of injury.

Subsection (c) reflects the Secretary's authority to dismiss a petition in whole or in part. An example of partial dismissal is the Secretary's decision not to initiate an investigation of a subsidy allegation which the Secretary previously found not to be a subsidy and which is not supported by new evidence.

Subsection (d) of the current regulation, which concerns notice to the Commission of the Secretary's decision, appears in subsections (b) and (c) of the proposed rule.

10. *Section 355.14.* This section corresponds to the second sentence of § 355.38 of the current regulation. It now specifies requirements for requests for exclusion from an order, including certifications of the producer, exporter, and the government of the affected country. The Secretary will not extend the time limit for submission of requests for exclusion. Once submitted, a request for exclusion may not be withdrawn, because the Secretary's investigation will be structured to take account of the request for exclusion. The certification requirement, which is tied to the programs the Secretary identifies in the notice of initiation of investigation, is intended to eliminate frivolous requests. (See also § 355.33(e) for the consequences of submission of exclusion certificates which the Secretary is unable to verify.)

Under subsection (c), the Secretary will investigate requests for exclusion "to the extent practicable," which means that the Secretary will consider in each investigation the specific administrative burden created by the requests. Where the Secretary decides that the administrative burden of investigating each request for exclusion is too great, given the statutory time limits, the Secretary may refuse to act on any or all of the requests.

11. *Section 355.15.* This section corresponds to § 355.28 of the current regulation. In subsection (a)(1), the current reference to "best information available" is changed in the proposed rule to read "available information." "Available information" is not limited to the "best information available" within the meaning of § 355.38. The phrase "the merchandise . . . from a country entitled to an injury test for the merchandise" replaces the current reference to "merchandise . . . from a country under the Agreement or duty-free merchandise" in order to clarify the statutory requirement for determination of injury. See preamble comments on § 355.12 (c) and (e).

Subsections (a)(2) and (a)(3) of the proposed rule, which describe the Secretary's preliminary determination, consolidate provisions in subsections (a) and (d) of the current regulation and, in subsection (a)(2)(iii), add a reference to a preliminary finding of critical circumstances. Provisional measures are limited to cash deposit or bond, the current practice. Regarding determination of the estimated net subsidy on a country-wide basis, the proposed rule implements section 607 of the 1984 Act, which amends section 706(a) of the Tariff Act. See the discussion under proposed § 355.20(d).

Subsection (a)(4) states that the notice will include an invitation for argument on the Secretary's preliminary determination. Subsection (a)(4) otherwise is revised to reflect the notice requirements of section 703(f) of the Tariff Act. This revision does not change current practice.

Subsections (b) and (c) of the proposed rule correspond to the respective subsections of the current regulation, except that the notice and publication requirements in subsection (b)(3) and (c) of the current regulation appear in subsection (e) of the proposed rule. Subsection (b)(2)(i) is revised to reflect current practice, and subsection (b)(2) (ii) and (iv) is revised to conform to the similar test for "extraordinary circumstances" in § 355.18(d). Subsection (c) states that the Secretary will grant a timely request from petitioner to postpone the preliminary determination, unless the Secretary finds compelling reasons to deny the request. This reflect current practice and Congressional intent.

Subsection (d) implements section 703(h) of the Tariff Act, as added by Section 613(c) of the 1984 Act, regarding time limits when the Secretary investigates upstream subsidies.

Subsection (e) of the proposed rule consolidates all notice requirements for the postponements of the preliminary determination described in this section.

Subsection (f) implements section 703(b) of the Tariff Act, as amended by section 603 of the 1984 Act, concerning waiver of verification.

Subsection (g), which corresponds to subsection (e) of the current regulation, no longer contains the requirement that the Commission "confirm" the obligation not to disclose "confidential" (proprietary) information. Confirmation is unnecessary, given the limitations on disclosure stated in this subsection and in § 355.32(f) of the proposed rule.

Subsection (h) reflects current practice concerning the disclosure conference, a meeting with a party to the proceeding at which a knowledgeable employee of the Department reviews calculations illustrative of the preliminary determination.

12. *Section 355.16.* This section corresponds to § 355.29 of the current regulation. Subsection (a) of the current regulation is reorganized for clarity and divided into two subsections. Subsection (a) of the proposed rule states the general requirements concerning critical circumstances allegations and clarifies that the Secretary may investigate critical circumstances on the Secretary's own initiative in investigations self-initiated under § 355.11. Subsection (b) of the proposed rule states the conditions for, and timing of, a preliminary finding of critical circumstances.

The word "finding" is used throughout the proposed rule to describe what in the Tariff Act and in the current regulation are called "determinations" of critical circumstances. The change is not substantive. It is intended to differentiate clearly in the regulation a determination regarding critical circumstances from a preliminary determination under § 355.15 or a final determination under § 355.20.

Subsection (b)(2) of the proposed rule incorporates the notice and publication requirements of subsections (b) and (d) or the current regulation.

Subsection (c), which corresponds to subsection (c) of the current regulation, is revised for clarity only. If the Secretary makes an affirmative preliminary finding of critical circumstances after an affirmative preliminary determination under § 355.15, the Secretary will amend the order (referred to in this subsection) suspending liquidation.

Subsection (d) states that the Secretary will make a final finding of critical circumstances under certain conditions. The subsection is based on portions of subsection (a) of the current regulation and on section 705 (a)(2) and (c)(4) of the Tariff Act, as added by section 605(a) of the 1984 Act.

Subsection (e), which is new, states that in making findings regarding critical circumstances in self-initiated investigations, the Secretary is not bound by the time limits that apply to findings in investigations based on a petition under § 355.12.

Subsections (f) and (g) describe what the Secretary normally will examine in deciding whether there have been "massive imports" in a "relatively short period," two of the statutory elements of the critical circumstances finding. The criteria described in the proposed rule are intended to clarify the bases for the Secretary's critical circumstances findings without adversely affecting the Secretary's administrative discretion. If the imports have accounted for a preponderance of the U.S. apparent consumption of the merchandise during the relatively short period, the Secretary might consider the imports massive, even if the increase is less than 15 percent over the base period described in this subsection.

13. *Section 355.17.* This section corresponds to § 355.30 of the current regulation. Subsection (a) implements section 704(a)(1) of the Tariff Act, as amended by section 604(a)(1) of the 1984 Act. The proposed rule clearly states the Secretary's authority to terminate self-initiated investigations.

Subsection (b) is new. Paragraphs (1) and (2) of subsection (b) implement section 704(a)(2) of the Tariff Act, as added by section 604(a)(1) of the 1984 Act. Under the 1984 Act, the Secretary must consider special "public interest" factors before terminating an investigation upon withdrawal of the petition based on the Secretary's acceptance of a quantitative restriction agreement. Paragraph (3) of subsection (b) implements section 761(b) of the Tariff Act, as added by section 611(a)(4) of the 1984 Act, regarding modifications of quantitative restriction agreements to take account of consultations held under new section 761(a) of the Tariff Act.

Subsection (c) revises subsection (b) of the current regulation for clarity.

Subsection (d), although a new provision, reflects section 704(f) of the Tariff Act and current practice.

14. *Section 355.18.* This section corresponds to § 355.31 of the current regulation. Subsection (a) of the proposed rule states the public interest requirement in subsection (f) of the current regulation, which is deleted as a separate subsection.

Subsection (b) of the proposed rule reorganizes for clarity the corresponding

subsection of the current regulation. Subsection (b)(1) states the public interest requirement in subsection (f) of the current regulation.

Subsection (b)(3) of the proposed rule modifies subsection (b)(3) of the current regulation to implement section 704(d)(1) of the Tariff Act, as amended by section 604(a)(2)(A) of the 1984 Act.

Subsection (c) provides for measurement of "substantially all" of the imports based either on the volume or on the value of imports, an addition to the current regulation that is consistent with the language and purpose of the Tariff Act. The portion of subsection (c) of the current regulation that concerns modification of agreements during administrative reviews is incorporated in § 355.22 of the proposed rule.

Subsection (d) and (e) are revised for clarity.

Subsection (f) revises for clarity subsection (g) of the current regulation.

Subsection (g) of the proposed rule sets forth in more explicit detail than corresponding subsection (h) of the current regulation the applicable procedures for suspension of investigation. Paragraph (g)(1), as revised, requires the foreign government or exporters to submit a proposed suspension agreement not later than 45 days before the scheduled date for the final determination, a requirement intended to give the Secretary and domestic interested parties adequate time to review and, if appropriate, suggest revisions to the proposed agreement. Paragraph (g)(3) includes a time limit for submitting comments on a proposed suspension agreement. While time may be very restrictive for commenting on a proposed suspension agreement, nothing is served by the Secretary's receipt of comments too late to consider them.

Subsection (h) provides for publication in the **Federal Register** of the text of the suspension agreement, which is the current practice. The last sentence of this subsection, which is new, provides the Secretary with explicit authority to incorporate into a suspension agreement factual and legal conclusions reached after a preliminary determination and subsequently the results of a final determination is an investigation continued under subsection (i). In addition, this subsection of the proposed rule, which includes subsections (i), (j), and (k) of the current regulation, is revised for clarity.

Subsection (i) corresponds to subsection (l) of the current regulation. The only substantive change is the reference to § 355.2(i)(6), the amended definition of interested party which is explained above under that section.

Subsection (j) adds to subsection (g) of the current regulations the additional authority in section 704(d)(2) of the Tariff Act, as amended by the 1984 Act, concerning the treatment of excess entries of the merchandise under a suspension agreement.

Subsection (k), which is new, implements section 761(b) of the Tariff Act, as added by section 611(a)(4) of the 1984 Act.

15. *Section 355.19.* This section, which corresponds to § 355.32 of the current regulation, states the applicable procedures when the Secretary decides or has reason to believe either that the signatory government or exporters have violated a suspension agreement, or that the agreement is no longer in the public interest or no longer subject to effective monitoring.

Subsection (a) of the proposed rule, like subsection (a) of the current regulation, provides for an expedited determination without prior notice or opportunity for comment. The Secretary would use the "fast track" approach in subsection (a) when the Secretary decides that the record shows clear evidence of violation and that notice and comment are unnecessary. Paragraph (a)(4) provides that, it appropriate, the Secretary will notify the Commissioner of Customs of the determination, in accordance with section 704(i)(1)(D) of the Tariff Act, as amended by section 604(a)(4)(C) of the 1984 Act. The Commissioner would take action, if appropriate, under section 704(i)(2) of the Tariff Act, if the violation was intentional.

Subsection (b) establishes a procedure for notice and comment on suspected violations or when the Secretary has reason to believe that a suspension agreement no longer meets the public interest or monitoring requirements of the Tariff Act. After the comment period, the Secretary would take appropriate action, which would mean the steps outlined in subsection (a) (issuing a contervailing duty order or resuming the investigation) if the Secretary finds a violation. If the Secretary does not determine that the agreement has been violated, the Secretary may nonetheless take action to correct any deficiencies in the agreement, including revising the agreement or cancelling it under subsection (a). In revising an agreement under this subsection, the Secretary could, for example, convert a suspension agreement eliminating the net subsidy to one eliminating injurious effect.

Subsection (c), which is new, allows the Secretary to include in an agreement additional signatory exporters. It codifies current administrative practice.

Subsection (d) of the proposed rule, which is new, defines "violation." References in the current regulation to "breach" and "intentional violation" are omitted from the proposed rule in favor of a straight-forward definition of a violation as significant noncompliance with an agreement's terms. If the Secretary finds an insignificant deviation, the Secretary would not consider the agreement to have been violated but could find the agreement is lacking under the public interest standards. Subsection (c) of the current regulation (intentional violations), as noted above, is dealt with in proposed subsection (a).

16. *Section 355.20.* This section corresponds to § 355.33 of the current regulation. Subsection (a) of the proposed rule incorporates subsections (a), (b), (e), and (f) of the current regulation but provides a more specific description, consistent with current practice, of the action the Secretary takes when the final determination is affirmative.

Subsection (b) implements section 703(h)(2) of the Tariff Act, as amended by section 613(c) of the 1984 Act, as to time limits when the investigation involves upstream subsidies.

Subsection (c) implements section 705(a)(1) of the Tariff Act, as amended by section 606 of the 1984 Act, regarding simultaneous antidumping and countervailing duty investigations. Subsection (c) of the current regulation, concerning disclosure conferences, is covered in subsection (h) of § 355.28 of the proposed rule. Subsection (d) of the current regulations is covered in § 355.39 (written argument and hearings) of the proposed rule.

Subsection (d) implements section 706(a)(2) of the Tariff Act, as added by section 607 of the 1984 Act. The enactment of section 607 was meant "to lessen the administrative burden on the administering authority stemming from implementing company-specific rates." Conference Report at 180. To that end, the provision establishes a presumption of a single, country-wide rate for each class or kind of merchandies investigated. The presumption can be overcome as described in subsection (d)(1). The proposed rule would apply a common-sense, two-tiered approach to whether a significant differential is show. With the weighted-average country-wide rate as the starting point, a significant differential would be 10 percentage points, or 25 percent whichever is greater. This recognizes that differences that at lower company

and country-wide rates might be significant are less significant as the weighted-average rate increases. Section 607 is designed to result in fewer company-specific rates than under current practice.

Subsection (e), which is new, states the consequences for an individual producer or exporter of failure to satisfy the requirements for exclusion stated in §§355.14 and 355.21.

Subsection (f) is new. It reflects current practice on sharing information with the Commission. See comment on proposed § 355.15(g).

Subsection (g), which corresponds to subsections (g) and (h) of the current regulation, provides a more detailed explanation of the effect, under current practice, of negative final determinations.

17. *Section 355.21.* This section corresponds to § 355.36 of the current regulation, except as noted below. Subsection (a) is modified to clarify the relationship between this section and section 751 of the Tariff Act, as amended by section 611(a)(2)(A) of the 1984 Act. Under current practice, the Secretary notifies the Customs Service of the amount of countervailing duty to assess at the completion of each administrative review under section 751.

Subsection (b) of the proposed rule corresponds to subsection (c) of the current regulation.

Subsection (d) of the current regulation is deleted, because information concerning critical circumstances is included in the Secretary's affirmative final determination under § 355.20(a)(2), not in the order.

Subsection (c) of the proposed rule corresponds to the first sentence of § 355.38 of the current regulation. This subsection ties the nonreceipt of benefits requirement to the programs identified in the Secretary's affirmative final determination. The current regulation is not explicit on this point.

18. *Section 355.22.* This section corresponds to § 335.41 of the current regulation. Subsection (a) of the proposed rule implements section 751(a) of the Tariff Act, as amended by section 611(a)(2)(A) of the 1984 Act. These amendments provide for administrative reviews upon request rather than automatically in each proceeding on an annual basis. The agency will promulgate a separate provision to control administrative reviews during the transition to full implementation of section 611(a)(2)(A) of the 1984 Act.

Any interested party, including an importer, may request a review to cover all producers and exporters of the merchandise. In addition, a foreign producer or exporter may request that the Secretary conduct a review of an order for the merchandise of that producer or exporter, if the requester submits with the request the certifications described in subsection (a)(2) (i), (ii), and (iii). Subsection (a)(2)(iii) requires additional certifications from suppliers and producers when the person submitting the request does not produce the merchandise (see preamble comment under proposed § 355.25(b)). As explained in subsection (f), requests submitted under subsection (a)(2) are premised on certifications that the merchandise has not benefitted during the period of review from any net subsidy.

Subsection (b) of the proposed rule describes the period and the exports (under subsection (b)(2), for first reviews, the entries or exports) of the merchandise that the Secretary will review upon request. The period may be longer or shorter for the first than for subsequent administrative reviews, because it covers the period between the time the Secretary first applied provisional measures and the end of the most recent completed reporting year of the government of the affected country. This subsection reflects the current practice in administrative reviews.

Subsection (c) of the proposed rule expands subsection (c) of the current regulation to provide specifically for each action the Secretary will take in a review under this section. The proposed reference to "a sample of interested parties" in subsection (c)(2) implements section 777A of the Tariff Act, as added by section 620(a) of the 1984 Act. See preamble comment on § 355.38(a)(2). Subsection (c)(7) of the proposed rule provides that the Secretary will issue the final results of administrative review not later than 365 days after the anniversary month during which the review was requested.

Disclosure of factual information, the subject of subsection (d) of the current regulation, is covered in subsection (c)(6). The subject of hearings, also in subsection (d) of the current regulation, is covered in § 355.39 of the proposed rule.

Subsection (d) of the proposed rule, dealing with individual countervailing duty rates, implements for administrative reviews section 706 of the Tariff Act, as amended by section 607(2) of the 1984 Act. This subsection is nearly identical to § 355.20(d) of the proposed rule.

Subsection (e) cross-references § 355.19, concerning cancellation and revision of suspension agreements, and provides that the Secretary may delay publishing final results of administrative review while taking action under § 355.19.

Subsection (f) describes the specific actions the Secretary may take when the Secretary issues final results of reviews based on requests under subsection (a)(2) from individual producers or exporters. In particular, unless the Secretary verifies that during the period of review the merchandise covered by the request under subsection (a)(2) did not benefit from any net subsidy previously found countervailable in the proceeding, the Secretary, as provided in paragraph (6) of this subsection, will refuse to consider any other requests for company-specific reviews for the duration of the countervailing duty order. If the Secretary is unable to verify that the merchandise did not benefit from a net subsidy previously found countervailable in a proceeding, the certification mechanism of the government of the affected country will necessarily be deficient. The impact of that result clearly extends beyond the particular producer or exporter which was the subject of the government's certification.

Subsection (g) provides for assessment of countervailing duties at the rate of the cash deposit of estimated countervailing duties required at the time of entry of the merchandise, when the Secretary has received no request, under subsection (a), for an administrative review. This provision also provides for continuation of the cash deposit of estimated countervailing duties at the latest determined rate. This implements the Congressional intent that the Secretary provide by regulation for duty assessment on entries for which no review has been requested (Conference Report at 181).

Subsection (h) of the proposed rule corresponds to subsection (b) of the current regulation but provides a more detailed statement of procedures applicable to changed circumstances reviews. The Secretary may initiate at any time (except as provided in subsection (h)(2)) a review based on changed circumstances. At the beginning of the review, if the Secretary has information sufficient to form the basis for the preliminary results, and the Secretary concludes that expedited action is warranted, the Secretary under subsection (h)(3) may combine the notices of initiation and preliminary results.

Subsection (i) implements section 762 of the Tariffs Act, as added by section 611 of the 1984 Act. This new provision concerns special reviews, conducted by the Secretary at the President's

direction, of the merchandise covered by quantitative restriction agreements which resulted either in withdrawal of a petition (and the Secretary's termination of the investigation) or the Secretary's suspension of an investigation. Subsection (i)(9) specifies what action, if any, the Secretary will take at the conclusion of the review. While the agreement remains in effect, the Secretary will not publish a countervailing duty order. At the expiration or other termination of the agreement, after any extensions of the agreement, the Secretary will publish and implement the order based on the final results of the review, unless the President before expiration directs the Secretary to conduct a new review under this subsection.

19. *Section 353.23.* This section corresponds to § 353.37 of the current regulation. The title is changed to Provisional Measures Deposit Cap to describe the subject more accurately. The phrase "under the Secretary's affirmative preliminary or affirmative final determination," which is new, clarifies that when an injury test is required, the estimated net subsidy established in the Secretary's final determination becomes the maximum amount which the Secretary may assess on entries made between publication of that determination and publication of the Commission's final affirmative determination. The estimated net subsidy rate set by the Secretary's preliminary determination will be the assessment ceiling for entries made up to the date of publication of the Secretary's final determination.

20. *Section 355.24.* This section corresponds to § 355.40 of the current regulation. Subsection (a) of the proposed rule incorporates the current regulation, revised for clarity, and states that the requirement for interest applies to entries made on or after the date of publication of the Secretary's order.

Subsection (b) implements section 778 of the Tariff Act, as amended by section 621 of the 1984 Act. That amendment makes interest payable at the Internal Revenue Code rates in effect while the particular entry remained unliquidated.

Subsection (c), which reflects current practice, clarifies the period for which the Customs Service calculates interest on overpayments and underpayments.

21. *Section 355.25.* This section corresponds to § 355.42 of the current regulation but is rewritten to provide a detailed statement of the standards and procedures for revocation of orders and termination of suspended investigations. In the proposed rule, subsection (a) provides for revocation or termination based on the absence of a subsidy, subsection (d) provides for revocation or termination based on changed circumstances, and subsection (e) provides for revocation or termination based on injury reconsideration by the Commission.

Subsection (a) provides three separate standards for revocation based on the absence of subsidy. Subsection (a)(1) provides for revocation or termination based on the foreign government's elimination, for a period of at least three years, of subsidy programs which the Secretary has found countervailable. Subsection (a)(2) provides for revocation or termination based on the absence, for a period of at least five years, of any net subsidy on all of the merchandise covered by the order or suspension. Subsection (a)(3) provides for revocation of an order, to the extent it applies to an individual producer or exporter, based on the absence, for a period of at least five years, of any net subsidy on the merchandise of the individual producer or exporter. Each type of revocation or termination under this subsection also is premised on the Secretary's finding that the foreign government is not likely to reinstate the program or substantially equivalent programs or, as appropriate, that the producer or exporter is not likely to apply for or receive any net subsidy from the same or substantially equivalent programs. Revocation for an individual firm which the Secretary previously has found to have received any net subsidy is contingent on an agreement to reinstate the order immediately if the Secretary later finds that the firms has received any net subsidy. The requirements for revocation in subsection (a) are consistent with section 751(c) of the Tariff Act, as amended by section 611(a)(3) of the 1984 Act, which provides that the Secretary may not revoke an order or terminate a suspended investigation based on the levy of an export tax, duty, or other charge intended to offset a net subsidy.

Subsection (b) states the requirements for requests for each type of revocation or termination described in subsection (a), including for each a certification requirement. Only the government of the affected country may submit a request for revocation or termination under subsections (b)(1) and (b)(2). The individual producer or exporter submits the request for revocation under subsection (b)(3). The government's certification is required for all three types of requests submitted by the government. In addition, the certifications of all producers and exporters are required for requests under subsection (b)(2). Requests for revocation under subsection (b)(3) from individual producers or exporters must be accompanied by the certifications described in § 355.22(a)(2) of those individual producers and exporters and, for firms previously found to have received a net subsidy, by the agreement to reinstate the order. If the person submitting the request under subsection (b)(3) is not the producer or supplier of the merchandise, the requester must submit the certifications of the producer and supplier. We recognize that this requirement may be very difficult in some instances. The alternative is to revoke the order with regard to the exporter when the merchandise may continue to benefits from a subsidy. We find this an unacceptable basis for the exercise of our discretionary authority to revoke.

Subsection (c) describes the procedures applicable in the administrative review based on the request for revocation or termination under subsection (b). The procedures add to or modify slightly those described in § 355.22(c). A revocation or termination under subsection (a) is effective for all merchandise entered, or withdrawn from warehouse, for consumption, on or after the first day after the period of review.

Subsection (d), concerning revocation or termination based on changed circumstances, is new. The subject is addressed only in passing in subsection (c) of the current regulation. Subsection (d)(1) states the criteria for revocation or termination under this subsection.

Subsection (d)(2) authorizes the Secretary to conduct an administrative review for the purpose of deciding whether the criteria for revocation or termination under subsection (d)(1) are met. The Secretary may conduct the review at any time that the Secretary concludes from available information that the revocation or termination may be warranted. Consistent with the legislative history of the 1984 Act, subsection (d)(2) also provides that an affirmative statement of no interest from the petitioner is sufficient for the Secretary to initiate a changed circumstances review to consider revocation. See Conference Report at 181.

Subsection (d)(3) adds to or modifies slightly the procedures applicable to an administrative review described in § 355.22(h).

Subsection (d)(4) provides for possible revocation of an order or termination of a suspended investigation based on an absence of interest (as demonstrated by the absence of requests for administrative review) for a period of five consecutive years. This "sunset"

provision will eliminate old orders and suspended investigations no longer of interest to domestic interested parties. Prior to revoking or terminating under this subsection, the Secretary will, in addition to publishing notice in the **Federal Register**, write individually to each known producer and seller of the like product in the United States. If any producer or seller, or any other interested party, objected, the Secretary would not revoke the order or terminate the suspended investigation under subsection (d)(4).

Subsection (d)(5), concerning the ending of suspension of liquidation and refund of cash deposits, corresponds to subsection (c)(3) of the proposed rule.

Subsection (e) provides for revocation or termination based on injury reconsideration by the Commission. This provision was reserved in subsection (d) of the current regulation.

22. *Section 355.31.* This section, which corresponds to portions of § 355.34 of the current regulation, concerns submission of factual information. Submission of written argument, the other portion of § 355.34 of the current regulation, is addressed in proposed § 355.39.

Subsections (a) through (d) are new. The Secretary will consider only those submissions which conform to the timing and other requirements of these subsections. Subsection (a)(1) establishes time limits for submission of factual information, and subsection (a)(2) states the consequences of late submission. Subsection (a)(2) is derived from subsection (a)(1) of the current regulation. "Factual information" is defined in proposed § 355.2(g).

Subsection (b) provides that the Secretary may request submission of factual information at any time during a proceeding. Subsection (b)(2) addresses the subject of time limits for responses to the Secretary's questionnaire and other requests for factual information and, given the need for timely analysis of responses and planning of verification activities, limits the Secretary's authority to consider unsolicited questionnaire responses. Subsection (b)(3) provides that under certain conditions the Secretary may extend the time limit for responding to a request and lists the employees of the Department who may approve (in writing) such an extension.

Subsection (c) establishes the time limit for submission of subsidy allegations not included in the original petition and provides for an extension of the time limit under certain conditions. It also bars submission after the preliminary determination of challenges to a petitioner's standing. Standing is important; however, it is also complex and the Department needs time to gather and evaluate the facts. Under this subsection, only certain specified employees of the Department may authorize extensions. This subsection does not cover upstream subsidy allegations, which are the subject of proposed §§ 355.15(d) and 355.20(b).

We expect the discretion to extend time limits under subsections (a), (b), and (c) to be exercised sparingly.

Subsections (d) and (e) correspond to subsections (a)(1) and (a)(2) of the current regulation, which was adopted as a final rule on May 30, 1984 (49 Fr 22467). Subsection (d) specifies, in accordance with current practice, when the Secretary considers a document received. Subsection (e) includes minor modifications of the current regulation and, in addition, includes a new paragraph (3) on submission of computer tapes. Tape submissions may be required unless the Department finds the firm does not maintain records in computerized form or otherwise could not submit a computer tape response without unreasonable additional burden. As provided in this subsection, the Department intends to reject nonconforming submissions.

Subsection (f), which is new, contains the requirement for submission of an English translation of any document submitted in a foreign language. The similar requirement in § 355.12(b) of the current regulation is limited to petitions.

Subsection (g) of the proposed rule modifies the service requirements in subsection (a)(3) of the current regulation by limiting service generally to interested parties on the Department's service list. The government of the affected country always must be served. The proposed rule also establishes a more specific certificate of service requirement.

Subsection (h) establishes a service list for each proceeding that will be maintained and available to the public in the Import Administration's Central Records Unit. The corresponding provision concerning designation of agents appears in subsection (b) of the current regulation.

23. *Section 355.32.* This section of the proposed rule covers the material in §§ 355.17 and 355.18 of the current regulation, modified as explained below.

Subsection (a) restates the requirement in the first three sentences of § 355.18(a) of the current regulation.

Subsection (b) of the proposed rule covers other portions of § 355.18(a) of the current regulation. Section 619(3) of the 1984 Act amends section 777 of the Tariff Act to require the submitter requesting proprietary treatment either to summarize for public release each portion of the submitted information (in sufficient detail to permit a reasonable understanding of the substance of the information) or to justify specifically why, as to each portion, summarization is impossible. The proposed rule reflects this statutory amendment and includes a special provision concerning summaries of voluminous information. The "brief" nonproprietary statement, permitted by current subsection (b)(3) if the submitter agrees to release under administrative protective order, is no longer consistent with section 777 of the Tariff Act as amended by section 619(3) of the 1984 Act.

Subsection (c) modifies the provision in subsection (a) of the current regulation concerning the submitter's agreement to disclose proprietary information under administrative protective order. Section 619(3) of the 1984 Act amends section 777 of the Tariff Act to require that requests for proprietary treatment be accompanied by the submitter's statement either agreeing or objecting to disclosure. The proposed rule clarifies that an objection to disclosure must include supporting arguments. The submitter should include in the objection any argument against disclosure to particular individuals who have requested disclosure. The Secretary may permit subsequent argument from the submitter only when submission of a request for disclosure raises compelling issues that the submitter could not have anticipated—for example, the identity of the representative who submits the request for disclosure, as may be the case when the requester becomes a party to the proceeding after the information is submitted.

Subsection (d) corresponds to § 355.18(b) and portions of § 355.18(e) in the current regulation. If the Secretary returns information because the submitter failed to provide an adequate summary, agreement to disclose, or the statements described in this revised section, the Secretary will give the submitter an additional 48 hours to return the information with a proper request for proprietary treatment. If the deadline for submitting the information has passed at the time the Secretary returns it, the Secretary will extend the deadline by 48 hours. If a conforming request is not submitted within 48 hours, however, the Secretary will not consider the information in the proceeding.

Subsection (e) corresponds to § 355.18(c) of the current regulation.

Subsection (f) incorporates the limitations on disclosure of proprietary information, under administrative

protective order and otherwise, that are stated in §§ 355.17 and 355.18(d) of the current regulations. The Department does not intend to change its current practice of not disclosing proprietary information submitted by one foreign firm to its foreign competitor. Since § 355.32 of the proposed rule concerns only proprietary information of a business nature, references in the current regulations to classified information are deleted. Subsection (f)(4) of the proposed rule, which is new, authorizes release to a Customs Service employee for use in a fraud investigation. The revision is required by section 619(2) of the 1984 Act, which amends section 777(b) of the Tariff Act.

Subsection (g) incorporates without change most of the substance of § 355.18(e) of the current regulation.

24. *Section 355.33.* This section, which states that information which is classified or privileged is exempt from disclosure, consolidates in one place the similar statements in §§ 355.17, 355.18 (a) and (e), and 355.20(a) of the current regulation.

25. *Section 355.34.* The proposed rule revises current procedures for submission of requests for disclosure of proprietary information under administrative protective order, for the purpose of making the procedure more efficient and more responsive to the needs of parties to the proceeding. The revision is intended to ensure timely action on requests for disclosure and is more specific as to protection of information disclosed. This section replaces § 355.20 of the current regulation.

Subsection (a) states the considerations relevant to the Secretary's decision whether or not to issue an administrative protective order. The Secretary will consider whether the requester has stated a sufficient need for the information, would protect adequately the information, and the probable effectiveness of the available sanctions in the event of a violation of the order. The Secretary will also consider whether disclosure will adversely affect the Secretary's ability to obtain proprietary information in subsequent proceedings. As under current practice, proprietary information is released under administrative protective order only to aid the requester's ability to assist the Department in reaching an accurate and reasoned result in the administrative decision process.

Subsection (b) implements section 619(4) of the 1984 Act, which authorizes standing requests for disclosure of information for the duration of each segment of a proceeding that culminates in a judicially reviewable decision. The interested party's representative must request disclosure at the earliest opportunity, which is defined in the proposed rule as 10 days after the later of the date the requesting interested party becomes a party to the proceeding or the date notice of initiation is published in the **Federal Register.** In addition, the Secretary will not consider requests received later than 10 days after the date of publication of the Secretary's preliminary determination or preliminary results of administrative review. The request must cover all proprietary information which the representative wants disclosed, whether or not in the record of the proceeding at the time the request is filed. The request must be submitted on the standard form provided by the Secretary (not a retyped copy or modified version of the form). The form (Form ITA–367) is drafted specifically to satisfy the requirements of section 777 of the Tariff Act. The regulation recognizes that the standard in section 777(c) for particularity of description of requested information must be read in light of the 1984 Act's provision for requesting information before the Department receives it, or even before the information exists. Consistent with the current practice, in-house (e.g., corporate) counsel are subject to the same rules as other attorneys who request disclosure. The statement in current § 355.20(a)(3) that disclosure generally will be made only to attorneys subject to disbarment for violation has been deleted. Economic and other consultants to a party's attorneys have played an increasingly significant role in recent years. We will continue to insist that the party's attorney (and the law firm) take responsibility for violation of an administrative protective order by consultants assisting the attorney in the proceeding.

Subsection (b)(3) lists the obligations that are imposed on the representative to whom the Secretary discloses the information under administrative protective order. Subsection (b)(4) lists possible sanctions for violation of the order. The representative must acknowledge those possibilities in the request. These subsections correspond to subsections (b), (c), and (e) of the current regulation.

Subsection (c) of the proposed rule is based on subsection (a)(4) of the current regulation, with the addition of a 24-hour time limit on withdrawal of information that the Secretary decides, over the submitter's objection, to disclose under protective order.

Subsection (d) permits the representative to retain the proprietary information, subject to the terms of the administrative protective order, after the Secretary has reached the judicially reviewable decision, for a limited period of time and under specific conditions. Before the administrative protective order lapses, the proposed rule requires that the proprietary information either be subject to the terms of an existing judicial protective order or that the representative destroy or return the proprietary information and certify to the Secretary full compliance with the terms of the order (including return or destruction of the information). The provisions of this subsection are more specific and comprehensive than the corresponding provisions of subsection (d) of the current regulation. They also take account of the potential for inefficiency in the current regulation that requires the representative to destroy notes based on proprietary information before any party decides to sue. We emphasize that this permission to retain proprietary information for a limited time after the Secretary has made the judicially reviewable decision may be withdrawn by the Secretary under the terms of subsection (d)(1). In no event will the Secretary release additional proprietary information after making a judicially reviewable decision, because the need to prepare for judicial review is not an adequate reason for additional disclosure. As stated earlier, release under administrative protective order is intended to benefit the Secretary's administrative decision by full participation of parties—no such benefit can result once the administrative process is concluded.

Subsection (e) states that the General Counsel of the Department will investigate each alleged violation of an administrative protective order and prepare a report to the Secretary. There is no corresponding provision in the current regulations. The Department intends firm and effective enforcement of administrative protective orders.

26. *Section 355.35.* The proposed rule retains the requirement in § 355.16 of the current regulation for preparation of memoranda of *ex parte* meetings during administrative reviews. Section 619(1) of the 1984 Act added this requirement to section 777(a)(3) of the Tariff Act, which previously appeared to limit the requirement to the investigation phase of a proceeding. The Secretary, rather than a party to the proceeding, prepares the memorandum. This is consistent with current practice.

27. *Section 355.36.* This section, which corresponds to § 355.43 of the current regulation, is modified to clarify that it covers all portions of a proceeding, not

just investigations. The change is required by section 775 of the Tariff Act as amended by the 1984 Act, which reflects current practice. The provision in the present regulation concerning initiation of a separate investigation is deleted, because it is neither required by section 775 nor a feasible option for the Secretary. Other clarifying changes are made in this subsection.

28. *Section 355.37.* The proposed rule separates the provisions in § 355.39 of the current regulation into two separate sections. Section 355.37 covers verification of information, and § 355.38 covers the use of best information available, a concept not limited to the verification process.

Subsections (a) and (b) of the proposed rule implement section 776(a) of the Tariff Act, as amended by section 618 of the 1984 Act. In addition to the specific verification requirements in that amendment (subsection (a)(1)(iv)), the proposed rule includes in subsection (a)(1)(iii) authority for verifications in administrative reviews whenever "the Secretary decides that there is good cause for verification." As noted by the Committee of Conference on page 177 of its report, section 618 of the 1984 Act generally codifies the current practice of verifying information relied upon in a final determination in an investigation and in later decisions which warrant verification. Specifically, the Secretary is to conduct a verification before revoking an order, in whole or in part, or if the Secretary decides that good cause to verify exists. In addition, the Secretary will carry out a verification if a timely written request for verification is submitted by a domestic interested party in a proceeding in which the Secretary has not conducted verification during either of the two immediately preceding reviews. Section 618 implicitly overrules *Al Tech Specialty Steel Corp.* v. *United States*, 6 CIT ——, 575 F. Supp. 1277 (1983), *aff'd*, 745 F.2d 632 (Fed. Cir. 1984).

Subsection (a)(2) implements for administrative reviews of orders and agreements the authority to use generally recognized sampling techniques, confirmed in section 777A of the Act, as added by section 620 of the 1984 Act.

Subsection (b) corresponds to the second sentence of subsection (a) of the current regulation as to notice of the methods and procedures used to verify.

Subsection (c) of the proposed rule clarifies subsection (c) of the current regulation and the current practice concerning verification procedures.

Subsections (d) and (e) of the current regulation are incorporated in § 355.31 of the proposed rule.

29. *Section 355.38.* This section, which is new, corresponds to § 355.39(b) of the current regulation. The proposed rule reflects current administrative practice. Legislative history to the 1984 Act confirms the Congressional intent to apply the concept of "best information available" to administrative reviews and other portions of a proceeding in addition to investigations. Conference Report at 177.

30. *Section 355.39.* This section of the proposed rule concerns written argument, addressed in § 355.34 of the current regulation, and also broadens and modifies substantially the current regulation on hearings in § 355.35.

Subsection (a) of the proposed rule establishes the procedures and requirements for all written argument after the Secretary's preliminary determination or preliminary results of administrative review. "Written argument" means all written submissions after the preliminary determination or preliminary results of administrative review that are not "factual information" and includes legal and policy contentions concerning the proceeding. Under subsection (a), any interested party and any agency of the U.S. government may submit written arguments but must do so in the "case brief" or the "rebuttal brief," as described in subsections (b) and (c), or in response to a request of the Secretary. As with factual information, the Secretary will not consider, or retain in the record, written argument which is untimely or otherwise does not follow these rules.

Subsection (b) describes the case brief and establishes time limits for submission. The case brief is a complete presentation of each argument that the party or the agency wants the Secretary to consider in making a final determination or the final results of administrative review. The case brief must also contain any request for a hearing the party wants on arguments raised in the brief. In an administrative review, an interested party may address only arguments specifically identified in the case brief for hearing presentation. The Department intends to implement this requirement by practice, to the extent possible, in investigations.

Subsection (c) describes the rebuttal brief and establishes time limits for its submission. In the rebuttal brief, an interested party may request a hearing specifically to present rebuttal arguments on issues that are identified and discussed in the rebuttal brief. To the extent possible in investigation and in all administrative reviews, rebuttal at the hearing is limited to arguments specifically identified in the rebuttal brief for such presentation.

Subsection (d) states special service requirements for case and rebuttal briefs in recognition of the tight time frames for submission of briefs by the parties and decisions by the Department in the proceeding. The rebuttal brief will usually be due seven days after the case brief, which ordinarily is due 35 days (30 days in an administrative review) after publication of the Secretary's preliminary determination or preliminary results.

Subsection (e) states when Secretary will hold a hearing, if requested, and the procedural rules that apply to hearings. Paragraph (e)(1) concerns the availability of verbatim transcripts. Paragraph (e)(2) specifies which employees of the Department may chair a hearing. Paragraph (e)(3) states rules for conduct of the hearing. The chair may request post-hearing briefs on specific issues; these requests will be the exception, rather than the rule.

Subsections (f) and (g) cross-reference the filing requirements stated in § 355.31(d) and (e) of the proposed rule.

31. *Sections 355.41 through 355.45.* These sections, which correspond to §§ 355.46 through 355.50 of the current regulation, are changed for clarity. Section 355.45 of the current regulation is incorporated in 355.1 of the proposed rule.

32. *Annex I.* Annex I of the proposed rule corresponds to Annex II of the current regulation, which was reserved. Annex I of the proposed rule provides a complete list of "countries under the Agreement," as defined in section 701(b) of the Tariff Act, on the date of this proposed rule. Annex I of the Current regulation is deleted because statements of policy and interpretation belong in the Secretary's determinations rather than in the regulation. Policy and interpretation are subject to change. Annex I of the current regulations covers only a small portion of the Department's methodology and, even for the covered subjects, is an incomplete statement of current practice.

Drafting Information:

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List of Subjects in 19 CFR Part 355

Business and industry, Foreign trade, Imports, Trade practices.

Dated: June 2, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

For the reasons stated in the preamble, we propose to revise 19 CFR Part 355 as follows:

PART 355—COUNTERVAILING DUTIES

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Subpart D—Quota Cheese Subsidy Determinations

355.41 Definition of "subsidy."
355.42 Annual list and quarterly update.
355.43 Determination upon request.
355.44 Complaint of price-undercutting by subsidized imports.
355.45 Access to information.
Annex I—List of Countries Under the Agreement.

Authority: Tariff Act of 1930, as amended, 19 U.S.C. 1303 and Subtitle IV Parts I, III and IV, Trade Agreements Act of 1979, Pub. L. 96–39, 19 U.S.C. 2501 Note; Trade and Tariff Act of 1984, Title VI, Pub. L. 98–573, 19 U.S.C. 1654 Note; and 5 U.S.C. 301.

The authority for § 355.12(h) is section 650 of Pub. L. 98–181 (November 30, 1983), which added sections 702(b)(3), 703(b)(2), and 708 to the Tariff Act of 1930, 19 U.S.C. 1671a (6)(3), 1671b (b)(2), and 1671g.

The authority for § 355.12(i)(1) is section 221 of the Trade and Tariff Act of 1984 which adds section 339 to the Tariff Act of 1930, 19 U.S.C. 1339.

The authority for § 355.41 through 355.46 is section 702 of the Trade agreements Act of 1979, 19 U.S.C. 1202 note.

Subpart A—Scope and Definitions

§ 355.1 Scope.

This part sets forth procedures and rules applicable to proceedings under section 303 and Title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1303, 1516a, and 1671–1677(g)) (the "Act"), relating to the imposition of countervailing duties, and under section 702 of the Trade Agreements Act of 1979 (19 U.S.C. 1202 note) ("Trade Agreements Act"), relating to subsidies on quota cheese. This part incorporates the regulatory changes made pursuant to Title VI of the Trade and Tariff Act of 1984 (Pub. L. 98–573; October 30, 1984). Certain portions of the regulations in this part do not apply to proceedings under section 303 of the Act in the case of the merchandise from a country that is not a "country under the agreement," as defined in section 701(b) of the Act, and also is not entitled to an injury test under section 303 of the Act for the merchandise. Specifically, for such proceedings under section 303:

(a) No determination by the Commission under section 703(a), 704, or 705(b)(1) of the Act is required;

(b) No investigation may be suspended by the Secretary under § 355.18(b);

(c) No finding of critical circumstances may be made by the Secretary, under § 355.16; and

(d) If an allegation or factual information regarding injury and subsidies is required by this part, only an allegation or factual information regarding subsidies is required.

§ 355.2 Definitions.

(a) *Act.* "Act" means the Tariff Act of 1930, as amended.

(b) *Agreement.* "Agreement" means the "Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade", that is, the Subsidies Code, and any amendments accepted by the United States.

(c) *Commission.* "Commission" means the United States International Trade Commission.

(d) *Country.* "Country" means a foreign country or a political subdivision, dependent territory, or possession of a foreign country, and may include an association of two or more foreign countries, political subdivisions, dependent territories, or possessions of foreign countries in a customs union outside the United States.

(e) *Customs Service.* "Customs Service" means the United States Customs Service of the United States Department of the Treasury.

(f) *Department.* "Department" means the United States Department of Commerce.

(g) Factual Information. "Factual information" means:

(1) Initial and supplemental questionaire responses;

(2) Data or statements of facts in support of allegations;

(3) Other data or statements of facts; and

(4) Documentary evidence.

(h) *Industry.* "Industry" means the producers in the United States collectively of the like product, except those producers in the United States that the Secretary excludes under section 771(4)(B) of the Act on the grounds that they are also importers (or are related to importers, producers, or exporters) of the merchandise. Under section 771(4)(C) of the Act, an "industry" may mean producers in the United States, as defined above in this paragraph, in a particular market in the United States if such producers sell all or almost all of their production of the like product in that market and if the demand for the like product in that market is not supplied to any substantial degree by producers of the like product located elsewhere in the United States.

(i) *Interested Party.* "Interested Party" means—

(1) A producer, exporter, or United States importer of the merchandise, or a trade or business association a majority of the members of which are importers of the merchandise;

(2) The government of the country in which the merchandise is produced (the affected country);

(3) A producer or seller (other than a retailer) in the United States of the like product;

(4) A certified or recognized union or group of workers which is representative of the industry in or of

sellers (other than retailers) in the United States of the like product;

(5) A trade or business association a majority of the members of which are producers or sellers (other than retailers) in the United States of the like product; or

(6) An association a majority of the members of which are interested parties, as defined in paragraph (i)(3), (i)(4) or (i)(5) of this section.

(j) *Investigation.* An "investigation" begins on the date of the publication of notice of initiation, resumption, or continuation of investigation and ends on date of the publication of the earliest of (1) notice of termination of investigation, (2) notice of rescission of investigation, (3) notice of a negative determination that has the effect of terminating the proceeding, (4) notice of suspension of investigation, or (5) an order.

(k) *The Merchandise.* "The merchandise" means the class or kind of merchandise imported or sold, or likely to be sold, for importation into the United States, that is the subject of the proceeding.

(l) *Party to the Proceeding.* "Party to the proceeding" means any interested party, within the meaning of paragraph (i) of this section, which has actively participated, through written submissions of factual information or written argument, in a particular decision by the Secretary subject to judicial review. Participation in a prior reviewable decision will not confer on any interested party "party to the proceeding" status in a subsequent decision by the Secretary subject to judicial review.

(m) *Person.* "Person" includes any "interested party" as well as any other individual, enterprise, or entity, as appropriate.

(n) *Proceeding.* A "proceeding" begins on the date of the filing of a petition, publication of a notice of initiation under § 355.11, or publication of a notice of initiation under § 355.22(i) if the review is of the merchandise subject to an understanding or other kind of agreement accepted under § 355.17(b), and ends on the date of the publication of the earliest of notice of (1) dismissal of petition, (2) rescission of initiation, (3) termination of investigation, (4) negative determination that has the effect of terminating the proceeding, (5) revocation of an order, or (6) termination of a suspended investigation.

(o) Producer; Production. "Producer" means a manufacturer or producer. "Production" means manufacture or production.

(p) *Sale; Likely sale.* A "sale" includes a contract to sell and a lease that is equivalent to a sale. A "likely sale" means a person's irrevocable offer to sell.

(q) *Secretary.* "Secretary" means the Secretary of Commerce of a designee. The Secretary has delegated to the Assistant Secretary for Trade Administration the authority to make final determinations under § 355.18(i), 355.20, and 355.22(i). The Deputy Assistant Secretary for Import Administration has other delegated authority relating to countervailing duties.

§ 355.3 Record of proceedings.

(a) *Official Record.* The Secretary will maintain in the Import Administration Central Records Unit, at the location stated in § 355.31(d), an official record of each proceeding. The Secretary will include in the record all factual information, written argument, or other material developed by, presented to, or obtained by the Secretary during the course of the proceeding which pertain to the proceeding. It will include governmental memoranda pertaining to the proceeding, memoranda of *ex parte* meetings, determinations, notices published in the **Federal Register**, and transcripts of hearings. It will not include any factual information, written argument, or other material which is not timely filed or which the Secretary returns to the submitter under § 355.32(d) or 355.34(c). The record will contain material that is public, proprietary, privileged, and classified. For purposes of section 516A(b)(2) of the Act, the record is the official record of each judicially reviewable segment of the proceeding.

(b) *Public Record.* The Secretary will maintain in the Central Records Unit a public record of each proceeding. The record will consist of all material described in paragraph (a) of this section that the Secretary decides may be disclosed to the general public. The public record will be available to the public for inspection and copying in the Central Records Unit, as provided in § 355.31(d). The Secretary will charge an appropriate fee for providing copies of documents.

(c) *Protection of Records.* Unless ordered by the Secretary or required by law, no record or portion of a record will be removed from the Department.

§ 355.4 Public, proprietary, privileged, and classified information.

(a) *Public Information.* The Secretary normally will consider the following to be public information:

(1) Factual information of a type that has been published or otherwise made available to the public by the person submitting it;

(2) Factual information that is not designated proprietary by the person submitting it;

(3) Factual information which, although designated proprietary by the person submitting it, is in a form which cannot be associated with or otherwise used to identify activities of a particular person;

(4) Laws, regulations, decrees, orders, and other official documents of a country, including English translation; and

(5) Written argument relating to the proceeding.

(b) *Proprietary Information.* The Secretary normally will consider the following factual information to be proprietary information, if so designated by the submitter:

(1) Business or trade secrets concerning the nature of a product or production process;

(2) Production costs (but not the identity of the production components unless a particular component is a trade secret);

(3) Distribution costs (but not channels of distribution);

(4) Terms of sale (but not terms of sale offered to the public);

(5) Prices of individual sales, likely sales, or other offers (but not (i) components of prices, such as transportation, if based on published schedules, (ii) dates of sale, (iii) product description except as described in paragraph (b)(1) of this section, ort (iv) order numbers);

(6) The names of particular customers, distributors, or suppliers (but not destination of sale or designation of type of customer, unless the destination or designation would reveal the name);

(7) The exact amounts of the gross of net subsidies received and used by a person (but not descriptions of the operations of the subsidies, or the amount if included in official published documents);

(8) The names of particular persons from whom proprietary information was obtained; and

(9) Any other specific business information the release of which to the public would cause substantial harm to the competitive position of the submitter.

(c) *Privileged Information.* The Secretary will consider information privileged if, based on principles of law concerning privileged information, the Secretary decides that the information

should not be released to the public or to parties to the proceeding.

(d) *Classified Information.* Classified information is information that is classified under Executive Order No. 12356 of April 2, 1982 (43 FR 28949) or successor executive order, if applicable.

§ 355.5 Library of foreign subsidy practices and countervailing measures.

The Secretary will maintain in the Central Records Unit a library of public information relating to all foreign subsidy practices and countervailing measures that are known to the Secretary, whether or not the subject of a proceeding. The Secretary will make documents in the library available to the public and will charge an appropriate fee for providing copies of documents. For further information, contact the Central Records Unit at the location stated in § 355.31(d).

§ 355.6 Trade And Tariff Act of 1984—effective date.

In accordance with section 626 of the Trade and Tariff Act of 1984 (Pub. L. No. 98-573) (for purposes of this subpart, referred to as "the 1984 Act"), the amendments to the Act made by Title VI of the 1984 Act are deemed effective as follows:

(a) Except as provided in paragraphs (b), (c) and (d) of this section, all amendments made by Title VI of the 1984 Act which affect authorities administered by the Secretary are effective on October 30, 1984.

(b) Amendments made by sections 602, 611, 612, and 620 of the 1984 Act which affect authorities administered by the Secretary take effect immediately with respect to all investigations and administrative reviews begun on or after October 30, 1984.

(c) Amendments made by section 623 of the 1984 Act, regarding judicial review, apply with respect to civil actions pending on, or filed on or after, October 30, 1984.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the Secretary may implement the amendments of the 1984 Act at a date later than October 30, 1984, if the Secretary determines that implementation in accordance with paragraph (a) or (b) of this section would prevent the Department from complying with other requirements of law.

Subpart B—Countervailing Duty Procedures

§ 355.11 Self-initiation.

(a) *In General.* (1) If the Secretary determines from available information that an investigation is warranted with respect to the merchandise, the Secretary will initiate an investigation and publish in the **Federal Register** a notice of "Initiation of Countervailing Duty Investigation." The Secretary will publish the notice only after providing the government of the affected country an opportunity for consultation to the extent required by article 3(l) of the Agreement or by a substantially equivalent obligation.

(2) The notice will include:

(i) A description of the merchandise, after consultation as appropriate with the Commission;

(ii) The name of the country in which the merchandise is produced and, if the merchandise is imported from a country other than that in which it is produced, the name of the intermediate country; and

(iii) A summary of the available information that would, if accurate, support the imposition of countervailing duties.

(b) *Information Provided to the Commission.* If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will notify the Commission at the time of initiation of the investigation and will make available to it and to its employees directly involved in the proceeding all information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determinations.

§ 355.12 Petition requirements

(a) *In General.* Any interested party, as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of section 355.2 who has reason to believe that:

(1) A subsidy is being provided with respect to the merchandise, and

(2) If the merchandise is from a country entitled to an injury test for the merchandise, an industry is materially injured, is threatened with material injury, or its establishment is materially retarded by the merchandise, may file on behalf of that industry a petition under this section requesting the imposition of countervailing duties equal to the alleged subsidy.

(b) *Contents of Petition.* The petition shall contain the following, to the extent reasonably available to the petitioner:

(1) The name and address of the petitioner and any person the petitioner represents;

(2) The identity of the industry on behalf of which the petitioner is filing, including the names and addresses of other persons in the industry (If numerous, provide information at least for persons that individually accounted for two percent or more of the industry during the most recent 12-month period.);

(3) A statement indicating whether the petitioner has filed for import relief under sections 337 or 732 of the Act (19 U.S.C. 1337, 1673a), sections 201 or 301 of the Trade Act of 1974 (19 U.S.C. 2251 or 2411), or section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862) with respect to the merchandise;

(4) A detailed description of the merchandise that defines the requested scope of the investigation, including technical characteristics and uses of the merchandise, and its current tariff classification under the Tariff Schedules of the United States;

(5) The name of the country in which the merchandise is produced and, if the merchandise is imported from a country other than that in which it is produced, the name of the intermediate country;

(6) The names and addresses of each person the petitioner believes benefits from the subsidy and exports the merchandise to the United States and the proportion of total exports to the United States which each person accounted for during the most recent 12-month period (If numerous, provide information at least for persons that individually accounted for two percent or more of the exports.);

(7) The alleged subsidy and factual information (particularly documentary evidence) relevant to the alleged subsidy, including the authority under which it is provided, the manner in which it is paid, and the value of the subsidy to producers or exporters of the merchandise;

(8) If the petitioner alleges an upstream subsidy under section 771A of the Act, factual information regarding:

(i) Domestic subsidies described in section 771(5) of the Act that the government of the affected country provides to the upstream supplier;

(ii) The competitive benefit the subsidies bestow on the merchandise; and

(iii) The significant effect the subsidies have on the cost of producing the merchandise;

(9) The volume and value of the merchandise (including information on individual sales, customers, and prices) during the most recent two-year period, and any other recent period that the petitioner believes to be more representative, or, if the merchandise was not imported during the two-year period, information as to the likelihood of its importation;

(10) The name and address of each person the petitioner believes imports or, if there were no importations, is likely to import the merchandise;

(11) If the merchandise is from a country entitled to an injury test for the merchandise, factual information regarding material injury, threat of material injury, or material retardation, as described in 19 CFR 207.11 and 207.26;

(12) If the petitioner alleges "critical circumstances" under section 355.16, factual information regarding:

(i) Material injury which is difficult to repair;

(ii) Massive imports in a relatively short period; and

(iii) An export subsidy inconsistent with the Agreement; and

(13) Any other factual information on which the petitioner relies.

(The information requirements in paragraph (b) have been approved by the Office of Management and Budget under control number 0625–0148.)

(c) *Simultaneous Filing With Commission.* If the merchandise is from a country entitled to an injury test for the merchandise, the petitioner must file a copy of the petition with the Commission and the Secretary on the same day and so certify in submitting the petition to the Secretary.

(d) *Proprietary Status of Information.* The Secretary will not consider any petition which contains factual information for which the petitioner requests proprietary treatment unless the petitioner meets the requirements of § 355.32.

(e) *Amendment of Petition.* The Secretary will allow timely amendment of the petition. If the merchandise is from a country entitled to an injury test for the merchandise, the petitioner must file an amendment with the Commission and the Secretary on the same day and so certity in submitting the amendment to the Secretary. The timeliness of new allegations is controlled under § 355.31.

(f) *Where to File; Time of Filing; Format and Number of Copies.* The requirements of § 355.31 (d), (e), (f), and (g) apply to this section.

(g) *Notification of Affected Country's Representative.* Upon receipt of a petition, the Secretary will deliver a public version of the petition, as described in § 355.31(e)(2), to a representative in Washington, D.C., of the government of the affected country.

(h) *Petition Based Upon Derogation of an International Undertaking on Official Export Credits.*. In addition to the other requirements of this section, if the sole basis of a petition is the derogation of an international undertaking on official export credits, the Secretary will immediately notify the Secretary of the Treasury of the filing. The petitioner shall file a copy of the petition with the Secretary of the Treasury and the Secretary on the same day and so certify in submitting the petition to the Secretary.

(i) *Assistance to Small Businesses; Additional Information.*

(1) The Secretary will provide technical assistance to eligible small businesses, as defined in section 339 of the Act, to enable them to prepare and file petitions. The Secretary may deny assistance if the Secretary concludes that the petition, if filed, could not satisfy the requirements of § 355.13.

(2) For additional information concerning petitions, contact the Director, Office of Investigations, Import Administration, International Trade Administration, Room 3085, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230; (202) 377–5497.

(j) *Limitation of Communication Before Initiation.*

(1) Except as provided in paragraph (j)(2), of this section, before the Secretary decides whether to initiate an investigation, the Secretary will not accept from an interested party, as defined in paragraph (i)(1) or (i)(2) of § 355.2, oral or written communication regarding a petition except inquiries concerning the status of the proceeding.

(2) The Secretary will provide the government of the affected country an opportunity for consultation to the extent required by article 3(1) of the Agreement or by a substantially equivalent obligation.

§ 355.13 Determination of sufficiency of petition.

(a) *Determination of Sufficiency.* Not later than 20 days after a petition is filed under § 355.12, the Secretary will determine whether the petition properly alleges the basis on which a countervailing duty may be imposed under section 701(a) of the Act, contains information reasonably available to the petitioner supporting the allegations, and is filed by an interested party as defined in paragraph (i)(3), (i)(4), (i)(5), and (i)(6) of § 355.2.

(b) *Notice of Initiation.* If the Secretary determines that the petition is sufficient under paragraph (a) of this section, the Secretary will initiate an investigation and publish in the **Federal Register** a notice of "Initiation of Countervailing Duty Investigation." The notice will include the information described in § 355.11(a). If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will notify the Commission at the time of initiation of the investigation and will make available to it and to its employees directly involved in the proceeding all information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determinations.

(c) *Insufficiency of Petition.* If the Secretary determines that a petition is insufficient under paragraph (a) of this section, the Secretary will dismiss the petition in whole or in part and, if appropriate, terminate the proceeding. The Secretary will notify the petitioner in writing of the reasons for dismissal, notify the Commission of the dismissal, if appropriate, and publish in the **Federal Register** a notice of "Dismissal of Countervailing Duty Petition", summarizing the reasons for dismissal.

§ 355.14 Request for exclusion from countervailing duty order.

(a) Any producer or exporter which exported the merchandise to the United States during the period described in paragraph (b)(1) of this section and which desires exclusion from a countervailing duty order must submit to the Secretary, not later than 30 days after the date of publication of the notice of initiation under § 355.11 or 355.13, an irrevocable written request for exclusion.

(b) The person must submit with the request:

(1) The person's certification that the person did not apply for or receive any net subsidy on the merchandise, during the period from the beginning of the last fiscal year for which the person has records to the date of filing of the petition, from any program listed in the Secretary's notice of initiation and will not apply for or receive any subsidy on the merchandise in the future;

(2) The certification of the government of the affected country that the government did not provide to that person any net subsidy during the period described in paragraph (b)(1) of this section; and

(3) If the person is not the producer of the merchandise, the certification under paragraph (b)(1) of this section of the suppliers and producers of the merchandise and the certification under paragraph (b)(2) of this section of the government regarding those suppliers and producers.

(c) The Secretary will investigate requests for exclusion to the extent practicable in each investigation.

§ 355.15 Preliminary determination.

(a) *In General.* (1) Not later than 85 days after the date of filing of a petition or the date of publication of a notice of initiation under § 355.11, the Secretary will make a determination based on the available information at the time

whether there is a reasonable basis to believe that a subsidy is being provided with respect to the merchandise. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will not make the determination unless the Commission has made an affirmative preliminary determination.

(2) The Secretary's determination will include:

(i) The factual and legal conclusions on which the determination is based;

(ii) The estimated net subsidy, if any, stated on a countrywide basis, except as provided in § 355.20(d); and

(iii) A preliminary finding on critical circumstances, if appropriate under § 355.16(b)(2)(i).

(3) If affirmative, the Secretary's determination will also:

(i) Order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the Secretary's preliminary determination; and

(ii) Impose provisional measures by instructing the Customs Service to require for each entry of the merchandise suspended under this subsection a cash deposit or bond equal to the estimated net subsidy.

(4) The Secretary will publish in the **Federal Register** a notice of "Affirmative (Negative) Preliminary Countervailing Duty Determination," including the estimated net subsidy, if any, and an invitation for argument consistent with § 355.39.

(5) The Secretary will notify all parties to the proceeding. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary also will notify the Commission.

(b) *Postponement in Extraordinarily Complicated Investigation.* If the Secretary decides the investigation is extraordinarily complicated, the Secretary may postpone the preliminary determination to not later than 150 days after the proceeding begins. The Secretary will base the decision on express findings that:

(1) The respondent parties to the proceeding are cooperating in the investigation;

(2) The investigation is extraordinarily complicated by reason of (i) the large number or complex nature of the alleged subsidies, (ii) novel issues raised, (iii) the need to determine the extent to which particular subsidies are used by individual producers or exporters, or (iv) the large number of producers and exporters; and

(3) Additional time is needed to make the preliminary determination.

(c) *Postponement at the Request of the Petitioner.* If the petitioner, not later than 25 days before the scheduled date for the Secretary's preliminary determination, requests a postponement and states the reasons for the request, the Secretary will postpone the preliminary determination to not later than 150 days after the date of filing of the petition unless the Secretary finds compelling reasons to deny the request.

(d) *Postponement to Investigate Upstream Subsidies.* If, prior to the Secretary's preliminary determination, the Secretary decides to investigate an upstream subsidy allegation and concludes that additional time is needed to investigate the allegation, the Secretary may postpone the preliminary determination to not later than 250 days after the proceeding begins (up to 310 days if also postponed under paragraph (b) or (c) of this section).

(e) *Notice of Postponement.* If the Secretary decides to postpone the preliminary determination under paragraph (b), (c), or (d) of this section, the Secretary will notify all parties to the proceeding not later than 20 days before the scheduled date for the Secretary's preliminary determination and will publish in the **Federal Register** a notice of "Postponement of Preliminary Countervailing Duty Determination," stating the reasons for the postponement.

(f) *Expedited Preliminary Determination.* Not later than 55 days after the initiation of an investigation under § 355.13, the Secretary will review the record of the first 50 days of the investigation. If the available information is sufficient for the Secretary to make a preliminary determination, the Secretary will disclose to the petitioner, and any interested party that has requested disclosure, all available public and proprietary information (subject to the requirements of § 355.34). If, not later than three government business days after disclosure, each party to whom disclosure was made furnishes an irrevocable written waiver of verification and agrees to a preliminary determination based on information in the record on the fiftieth day of the investigation, the Secretary will make an expedited preliminary determination.

(g) *Commission Access to Information.* If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding all information upon which the Secretary based the determination and which the Commission may consider relevant to its injury determination.

(h) *Disclosure.* Promptly after making the preliminary determination, the Secretary will provide to parties to the proceeding which request disclosure a further explanation of the determination.

§ 355.16 Critical circumstances findings.

(a) *In General.* If the merchandise is from a country entitled to an injury test for the merchandise and if a petitioner submits to the Secretary a written allegation of critical circumstances, with reasonably available factual information supporting the allegation, not later than 21 days before the scheduled date of the Secretary's final determination, or on the Secretary's own initiative in an investigation under § 355.11, the Secretary will make a finding whether:

(1) Any alleged subsidy is inconsistent with the Agreement; and

(2) There have been massive imports of the merchandise over a relatively short period.

(b) *Preliminary Finding.* (1) If the petitioner submits the allegation of critical circumstances not later than 30 days before the scheduled date for the Secretary's final determination under § 355.20, the Secretary, based on the available information, will make a preliminary finding whether there is a reasonable basis to believe that critical circumstances as described in paragraph (a) of this section exist.

(2) The Secretary will issue the preliminary finding:

(i) As part of the Secretary's preliminary determination under § 355.15, if the allegation is submitted not later than 20 days before the scheduled date for the preliminary determination; or

(ii) Not later than 30 days after the petitioner submits the allegation, if the allegation is submitted later than 20 days before the scheduled date for the Secretary's preliminary determination.

The Secretary will notify the Commission and publish in the **Federal Register** a notice of the preliminary finding.

(c) *Suspension of Liquidation.* If the Secretary makes an affirmative preliminary finding of critical circumstances, the Secretary will order the suspension of liquidation of all entries of the merchandise, if the Secretary had not already done so as part of an affirmative preliminary determination. Any suspension of liquidation that the Secretary orders at this time, or ordered previously under this part, will apply to all entries of the

merchandise entered, or withdrawn from warehouse, for consumption on or after 90 days before the date of the order of suspension of liquidation.

(d) *Final Finding.* For any allegation submitted not later than 21 days before the scheduled date for the Secretary's final determination under § 355.20, the Secretary will make a final finding on critical circumstances. If the final finding is affirmative and if the Secretary did not make an affirmative preliminary finding of critical circumstances, the Secretary will order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after 90 days before the date the Secretary ordered suspension of liquidation either as part of an affirmative preliminary or final determination. If the final finding is negative and if the Secretary made an affirmative preliminary finding of critical circumstances, the Secretary will end the retroactive suspension of liquidation ordered under paragraph (c) of this section, and will instruct the Customs Service to release the cash deposit or bond.

(e) *Findings in Self-Initiated Investigations.* In investigations initiated under § 355.11, the Secretary will make a preliminary and final finding on critical circumstances without regard to the time limits in paragraphs (b) and (d) of this section.

(f) *Massive Imports.* In determining for the purpose of paragraph (a) of this section whether imports of the merchandise have been massive, the Secretary normally will examine:

(1) The volume and value of the imports;

(2) Seasonal trends; and

(3) The share of domestic consumption accounted for by the imports.

In general, unless the imports during the period identified in paragraph (g) of this section have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.

(g) *Relatively Short Period.* For the purpose of paragraph (a) of this section, the Secretary normally will consider the period beginning on the date the proceeding begins and ending on the date the Secretary orders suspension of liquidation. However, if the Secretary finds that importers or exporters had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider the period from that earlier time to the date the Secretary ordered suspension of liquidation.

§ 355.17 Termination of investigation.

(a) *Withdrawal of Petition.* (1) Except as provided in paragraph (b) of this section, the Secretary may terminate an investigation upon withdrawal of the petition by the petitioner or on the Secretary's own initiative in an investigation initiated under § 355.11, after notifying all parties to the proceeding and, if the merchandise is from a country entitled to an injury test on the merchandise, after consultation with the Commission. The Secretary may not terminate an investigation unless the Secretary concludes the termination is in the public interest.

(2) If the Secretary terminates an investigation, the Secretary will publish in the **Federal Register** a notice of "Termination of Countervailing Duty Investigation" together with, when appropriate, a copy of any correspondence with the petitioner forming the basis of the withdrawal and the termination.

(b) *Withdrawal of Petition Based on Acceptance of Quantitative Restriction Agreements.* (1) The Secretary may not terminate under paragraph (a) of this section an investigation by accepting an understanding or other kind of agreement with the government of the affected country to restrict the volume of the merchandise unless the Secretary, taking into account the factors listed in section 704(a)(2)(B) of the Act, is satisfied that termination is in the public interest.

(2) In deciding for the purpose of this subsection whether termination is in the public interest, the Secretary, to the extent practicable, will consult with representatives of potentially affected United States consuming industries and potentially affected persons in the industry, including persons not parties to the proceeding.

(3) At the direction of the President of the United States or a designee, the Secretary will modify any understanding or other kind of quantitative restriction agreement accepted under paragraph (b)(1) of this section as a result of consultations entered into under section 761 (a) of the Act.

(c) *Negative Determination.* An investigation terminates, without further comment or action, upon publication in the **Federal Register** of the Secretary's negative final determination or the Commission's negative preliminary or final determination.

(d) *End of Suspension of Liquidation.* If the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension ended on the date of publication of the notice of termination under paragraph (a) of this section or on the date of publication of a negative determination referred to in paragraph (c) of this section, and will instruct the Customs Service to release the cash deposit or bond.

§ 355.18 Suspension of investigation.

(a) *Agreement to Eliminate or Offset Completely a Subsidy or to Cease Exports.* If the Secretary is satisfied that suspension is in the public interest, the Secretary may suspend an investigation at any time before the Secretary's final determination by accepting an agreement with the government of the affected country or exporters that account for substantially all of the merchandise:

(1) To eliminate or to offset completely the net subsidy, with respect to the merchandise; or

(2) To cease exports of the merchandise, not later than 180 days after the date of publication of the notice of suspension of investigation.

(b) *Agreement Eliminating Injurious Effect.* (1) As provided in this paragraph and paragraph (b)(2) of (b)(3) of this section, the Secretary may suspend an investigation at any time before the Secretary's final determination if the merchandise is from a country entitled to an injury test for the merchandise and if the Secretary:

(i) Is satisfied that the proposed suspension is in the public interest;

(ii) Finds that extraordinary circumstances are present; and

(iii) Finds that the agreement will eliminate completely the injurious effect of the merchandise.

(2) The Secretary may suspend an investigation under paragraph (b)(1) of this section by accepting an agreement with the government of the affected country or exporters that account for substantially all of the merchandise, if the Secretary finds that:

(i) The agreement will prevent the suppression or undercutting by the merchandise of prices of like products produced in the United States; and

(ii) The agreement will eliminate or offset completely at least 85 percent of the net subsidy.

(3) The Secretary may suspend an investigation under paragraph (1) by accepting an agreement with the government of the affected country to restrict the volume of the merchandise. In considering for the purpose of this paragraph whether suspension is in the public interest, the Secretary will take into account the factors listed in section 704(a)(2)(B) of the Act and, to the extent practicable, consult with representatives

of potentially affected persons in the industry, including persons not party to the proceeding.

(c) *Definition of "Substantially All".* For purposes of paragraphs (a) and (b)(2) of this section, exporters who account for "substantially all" of the merchandise means exporters that have accounted for not less than 85 percent by value or volume of the merchandise during the period for which the Department is measuring benefits in the investigation or other period that the Secretary considers representative.

(d) *Definition of "Extraordinary Circumstances".* For purpose of paragraph (b) of this section, "extraordinary circumstances" means circumstances in which (1) suspension of the investigation will be more beneficial to the industry than continuation of the investigation, and (2) there are a large number of alleged subsidy practices which are complicated, the issues raised are novel, or the number of exporters is large.

(e) *Monitoring.* The Secretary will not accept an agreement unless effective monitoring of the agreement by the Secretary is practicable. In monitoring an agreement under paragraph (b) of this section, the Secretary will not be obliged to ascertain on a continuing basis the prices in the United States of the merchandise or of like products produced in the United States.

(f) *Exports Not to Increase During Interim Period.* The Secretary will not accept an agreement under paragraph (a) of this section unless the agreement ensures that the quantity of the merchandise exported during the interim period for elimination or offset of the subsidy of cessation of exports does not exceed the quantity of the merchandise exported during a period of comparable duration that the Secretary considers representative.

(g) *Procedure for Suspension of Investigation.* (1) The Government of the affected country or the exporters, as appropriate, shall submit to the Secretary a proposed agreement not later than 45 days before the scheduled date for the Secretary's final determination under § 355.20.

(2) The Secretary will:

(i) Not later than 30 days before the date the Secretary suspends the investigation, notify all parties to the proceeding of the proposed suspension and provide to the petitioner a copy of the agreement preliminarily accepted by the Secretary (The agreement shall contain the procedures for monitoring compliance and a statement of the compatibility of the agreement with the requirements of this section); and

(ii) Consult with the petitioner concerning the proposed suspension.

(3) The Secretary will provide all interested parties and United States government agencies an opportunity to submit, not later than five days before the scheduled date for the Secretary's final determination, written argument and factual information concerning the proposed suspension.

(h) Acceptance of Agreement. If the Secretary accepts an agreement to suspend an investigation, the Secretary will publish in the **Federal Register** a notice of "Suspension of Countervailing Duty Investigation," including the text of the agreement. If the Secretary has not already published a notice of affirmative preliminary determination, the Secretary will include that notice. In accepting an agreement, the Secretary may rely on factual or legal conclusions the Secretary reached in or after the affirmative preliminary determination.

(1) If the Secretary suspends an investigation based on an agreement under paragraph (a) of this section, the Secretary will not order the suspension of liquidation of entries of the merchandise. If the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension of liquidation ended on the effective date of notice of suspension of investigation and will instruct the Customs Service to release the cash deposit or bond.

(2) If the Secretary suspends an investigation based on an agreement under paragraph (b) of this section, the Secretary will order the suspension of liquidation to continue or begin, as appropriate. The suspension of liquidation will not end until the Commission completes any requested review, under section 704(h) of the Act, of the agreement. If the Commission receives no request for review within 20 days after the date of publication of the notice of suspension of investigation, the Secretary will order the suspension of liquidation ended on the 21st day after the date of publication, and will instruct the Customs Service to release the cash deposit or bond.

(3) If the Commission undertakes a review under section 704(h) of the Act of an agreement and determines that the agreement will not eliminate the injurious effect, the Secretary will resume the investigation on the date of publication of the Commission's determination as if the Secretary's affirmative preliminary determination had been made on that date. If the Commission determines that the agreement eliminate the injurious effect, the Secretary will continue the suspension of investigation and order the suspension of liquidation ended on the date of publication of the Commission's determination, and will instruct the Customs Service to release the cash deposit or bond.

(i) *Continuation of Investigation.* (1) An interested party, as defined in paragraph (i)(2), (3), (4), (5), or (6) of § 355.2, not later than 20 days after the date of publication of the notice of suspension of investigation, may request in writing that the Secretary continue the investigtion. If the merchandise is from a country entitled to an injury test for the merchandise, the party shall simultaneously file a request with the Commission to continue its investigation.

(2) Upon receiving the request, the Secretary and, if appropriate, the Commission will continue the investigation. If the Secretary and the Commission make affirmative final determinations, the suspension agreement will remain in effect in accordance with the factual and legal conclusions in the Secretary's final determination. This paragraph does not affect the provisions of paragraph (h) of this section regarding suspension of liquidation.

(j) *Merchandise Improted in Excess of Allowed Quantity.*

(1) The Secretary may instruct the Customs Service not to accept entries, or withdrawals from warehouse, for consumption of the merchandise in excess of any quantity allowed by an agreement under paragraph (a) or (b) of this section.

(2) Imports in excess of the quantity allowed by an agreement may be exported or destroyed under Customs Service supervision, except that if the agreement is under paragraph (b)(2) of this section, the excess merchandise may be held for future opening under the agreement by placing it is a foreign trade zone or by entering it for warehouse.

(k) *Modification of Quantative Restriction Agreements.* At the direction of the President or a designee, the Secretary will modify an agreement accepted under paragraph (b)(2) of this section as a result of consultations under section 761(a) of the Act.

§ 355.19 Violation of agreement.

(a) *Immediate Determination.* If the Secretary determines that the signatory foreign government or exporters have violated a suspension agreement, the Secretary, without right of comment, will:

(1) Order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after: (i) Ninety

days before the date of publication of the notice of cancellation of agreement, or (ii) if later, the date of first entry, or withdrawal from warehouse, for consumption of the merchandise the sale or export of which was in violation of the agreement;

(2) If the investigation was not completed under § 355.18(i) resume the investigation as if the Secretary made an affirmative preliminary determination on the date of publication of the notice of cancellation and impose provisional measures by instructing the Customs Service to require for each entry of the merchandise suspended under this subsection a cash deposit or bond equal to the estimated net subsidy determined in the affirmative preliminary determination;

(3) If the investigation was completed under § 355.18(i), issue a countervailing duty order for all entries subject to suspension of liquidation under paragraph (a)(1) of this section and instruct the Customs Service to require for each entry of the merchandise suspended under this paragraph a cash deposit equal to the estimated net subsidy determined in the affirmative final determination;

(4) Notify all persons who are or were parties to the proceeding and, if appropriate, the Commission and the Commissioner of Customs; and

(5) Publish in the **Federal Register** a notice of "Countervailing Duty Order (Resumption of Countervailing Duty Investigation); Cancellation of Suspension Agreement."

(b) *Determination After Notice and Comment.* (1) Notwithstanding, paragraph (a) of this section, if the Secretary has reason to believe that the signatory government or exporters have violated an agreement or that an agreement no longer meets the requirements of subsection 704(d)(1) of the Act, the Secretary will publish in the **Federal Register** a notice of "Invitation for Comment on Countervailing Duty Suspension Agreement."

(2) After publication of the notice inviting comment the Secretary will:

(i) If the Secretary determines that the signatory government or exporters have violated the agreement, take appropriate action as described in paragraphs (a)(1) through (a)(5) of this section; or

(ii) If the Secretary determines that the agreement no longer meets the requirements of section 704(d)(1) of the Act: (A) Take appropriate action as described in paragraphs (a)(1) through (a)(5) of this section, except that, for paragraph (a)(1)(ii) of this section, the date shall be the date of first entry of the merchandise under the agreement;

(B) Continue the suspension of investigation by accepting a revised suspension agreement under § 355.18(a) (whether or not the Secretary accepted the original agreement under that subsection) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) of the Act, and publish in the **Federal Register** a notice of "Revision of Agreement Suspending Countervailing Duty Investigation;" or

(C) Continue the suspension of investigation by accepting a revised suspension agreement under § 355.18(b) (whether or not the Secretary accepted the original agreement under that subsection) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) of the Act, and publish in the **Federal Register** a notice of "Revision of Agreement Suspending Countervailing Duty Investigation."

If the Secretary continues to suspend an investigation based on a revised agreement accepted under § 355.18(b), the Secretary will order suspension of liquidation to begin. The suspension will not end until the Commission completes any requested review, under section 704(h) of the Act, of the agreement. If the Commission receives no request for review within 20 days after the date of publication of the notice of the revision, the Secretary will order the suspension of liquidation ended on the 21st day after the date of publication, and will instruct the Customs Service to release the cash deposit or bond. If the Commission undertakes a review under section 704(h) of the Act, the provisions of § 355.18(h)(3) will apply.

(iii) If the Secretary decides neither to consider the order violated nor to revise the agreement, the Secretary will publish in the **Federal Register** a notice of the Secretary's decision under this subsection, including a statement of the factual and legal conclusions on which the decision is based.

(c) If the Secretary decides that the agreement no longer meets the requirements of § 355.18(b)(1)(iii) or that the signatory exporters no longer account for substantially all of the merchandise, the Secretary may revise the agreement to include additional signatory exporters.

(d) *Definition of "Violation."* For the purpose of this section, "violation" means significant noncompliance with the terms of a suspension agreement caused by an act or omission of a signatory foreign government or exporter.

§ 355.20 Final determination.

(a) *In General.* (1) Not later than 75 days after the date of publication of the Secretary's preliminary determination, the Secretary will make a final determination whether a net subsidy is being provided with respect to the merchandise.

(2) The Secretary's determination will include:

(i) The factual and legal conclusions on which the determination is based;

(ii) The estimated net subsidy, if any, stated on a country-wide basis, except as provided in paragraph (d) or (e) of this section; and

(iii) If appropriate, a final finding on critical circumstances under § 355.16.

(3) If affirmative, the Secretary's determination will also:

(i) Unless previously ordered by the Secretary, order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the Secretary's final determination; and

(ii) If the merchandise is from a country not entitled to an injury test for the merchandise, instruct the Customs Service to require a cash deposit, as provided in § 355.21(b), for each suspended entry of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of the countervailing duty order under § 355.21; or

(iii) If the merchandise is from a country entitled to an injury test for the merchandise, instruct the Customs Service to require a cash deposit or bond equal to the estimated net subsidy determined under this subsection for each suspended entry of the merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the Secretary's final determination.

(4) The Secretary will publish in the **Federal Register** a notice of "Affirmative (Negative) Final Countervailing Duty Determination," including the estimated net subsidy, if any.

(5) The Secretary will notify all parties to the proceeding. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will also notify the Commission.

(b) *Postponement to investigate Upstream Subsidies.* If, after the Secretary's preliminary determination, the Secretary decides to investigate an upstream subsidy allegation and concludes that additional time is needed to investigate the allegation, the Secretary may:

(1) If the Secretary's preliminary determination was negative, postpone the final determination under this section to not later than 165 days after the preliminary determination;

(2) If the Secretary's preliminary determination was affirmative:

(i) Postpone the final decision concerning upstream subsidization until the conclusion of the first administrative review of a countervailing duty order, if any; or

(ii) At the written request of the petitioner: (A) Make the decision concerning upstream subsidization in the final determination under this section;

(B) Postpone the final determination to not later than 165 days after the preliminary determination; and

(C) End the suspension of liquidation ordered in the preliminary determination not later than 120 days after the date of publication of the preliminary determination, and not resume it unless the ITC publishes a final affirmative determination, or, if the merchandise is from a country not entitled to an injury test for the merchandise, the Secretary publishes a countervailing duty order. The Secretary, not later than 20 days before the scheduled date for the Secretary's final determination, will notify all parties to the proceeding of the decision to postpone either the final determination or the decision concerning upstream subsidization.

(c) *Postponement for Simultaneous Investigations.* (1) If the Secretary simultaneously initiated antidumping and countervailing duty investigations on the merchandise (from the same or other countries), the Secretary at the petitioner's request will:

(i) Postpone the final determination under this part to the date of the final determination under Part 353, unless the Secretary's final determination under this part is due on a later date as the result of postponement under paragraph (b) or § 355.15; and

(ii) End any suspension of liquidation ordered in the preliminary determination not later than 120 days after the date of publication of the preliminary determination, and not resume it unless the ITC publishes a final affirmative determination, or, if the merchandise is from a country not entitled to an injury test for the merchandise, the Secretary publishes a countervailing duty order.

(2) The petitioner shall submit any such request in writing not later than 10 days before the scheduled date for the Secretary's final determination under this part.

(d) *Calculation of Individual Rates.* (1) If a producer or exporter is government-owned, the Secretary will, and to the extent practicable for other producers or exporters the Secretary may, investigate whether a significant differential existed, during the period for which the Department is measuring benefits in the investigation, between the net subsidy received by an individual producer or exporter of the merchandise and the weighted-average net subsidy calculated on a country-wide basis.

(2) If the Secretary decides that an individual (including government-owned) producer or exporter received a significantly different net subsidy during the period, the Secretary will state in the final determination an individual estimated net subsidy for that person.

(3) A significant differential is a difference of the greater of at least 10 percentage points, or 25 percent, from the weighted-average net subsidy calculated on a country-wide basis.

(e) *Effect of Decision not to Exclude From Order.* If the Secretary finds that a person requesting exclusion under § 355.14 received, during the period for which the Department measured benefits in the investigation, and net subsidy from any program that the Secretary determines countervailable in the affirmative final determination, the Secretary will state in the affirmative final determination an individual rate for that person, and that rate will be the basis for the cash deposit or bond, as appropriate, of estimated countervailing duties for that person. The individual rate will be the greater of the weighted-average net subsidy stated on a country-wide basis or the individual rate calculated for that person.

(f) *Commission Access to Information.* If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding all information upon which the Secretary based the final determination and which the Commission may consider relevant to its injury determination.

(g) *Effect of Negative Final Determination.* An investigation terminates, without further comment or action, upon publication in the **Federal Register** of the Secretary's or the Commission's negative final determination. If the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension ended on the date of publication of the notice of negative final determination and will instruct the Customs Service to release the cash deposit or bond.

§ 355.21 Countervailing Duty Order.

Not later than seven days after receipt of the notice of the Commission's affirmative final determination under section 705 of the Act, or simultaneously with the publication of the Secretary's affairmative final determination if the merchandise is from a country not entitled to an injury test for the merchandise, the Secretary will publish in the **Federal Register** a "Countervailing Duty Order" that:

(a) Instructs the Customs Service to assess countervailing duties on the merchandise, in accordance with the Secretary's instructions at the completion of each administrative review requested under § 355.22(a) or, if not requested, in accordance with the Secretary's instructions under § 355.22(g);

(b) For each entry of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the order, instructs the Customs Service to require a cash deposit of estimated countervailing duties equal to the net subsidy stated in the Secretary's final determination; and

(c) Excludes from the application of the order any producer or exporter that complies with the requirements of § 355.14 and that the Secretary finds did not receive directly or indirectly, during the period for which the Department measured benefits in the investigation, any net subsidy on the merchandise from any program that the Secretary determined countervailable in the affirmative final determination.

§ 335.22 Administrative review of orders and suspension agreements.

(a) *Request for Administrative Review.* (1) Each year during the anniversary month of the publication of an order or suspension of investigation (the calendar month in which the anniversary of the date of publication of the order or suspension occurred), an interested party may request in writing that the Secretary conduct an administrative review of all producers or exporters covered by an order or an agreement on which suspension of investigation was based.

(2) During the same month, a producer or exporter covered by an order may request in writing that the Secretary conduct an administrative review of only that person if the person submits with the request:

(i) The person's certification that the person did not apply for or receive any net subsidy on the merchandise, during the appropriate period described in paragraph (b) of this section, from any program that the Secretary previously

found countervailable in the proceeding, and that the person will not do so in the future;

(ii) The certification of the government of the affected country that the government did not provide to that person any net subsidy, during the period described in paragraph (b) of this section, from any program that the Secretary previously found countervailable in the proceeding; and

(iii) If the person is not the producer of the merchandise, the certifications under paragraph (a)(2)(i) of this section of the suppliers and producers of the merchandise and the certification under paragraph (a)(2)(ii) of this section of the government regarding those suppliers and producers.

(b) *Period Under Review.* (1) Except as provided in paragraph (2), an administrative review under paragraph (a) of this section normally will cover exports of the merchandise during the most recent completed reporting year of the government of the affected country.

(2) For requests received during the first anniversary month after publication of an order or suspension of investigation, the review under paragraph (a) of this section will cover entries or exports, as appropriate, during the period from the date of suspension of liquidation under this Part or suspension of investigation to the end of the most recent completed reporting year of the government of the affected country.

(c) *Procedures.* After receipt of a timely request under subsection (a), or on the Secretary's own initiative when appropriate, the Secretary will:

(1) Within the first 10 days after the anniversary month, publish in the **Federal Register** a notice of "Initiation of Countervailing Duty Administrative Review;"

(2) Send to appropriate interested parties or a sample or interested parties, normally not later than 30 days after the date of publication of the notice of initiation, questionnaires requesting factual information for the review;

(3) Conduct, if appropriate, a verification under § 355.37(a)(1) (iii) or (iv);

(4) Issue preliminary results of review, based on the available information, that include:

(i) The factual, and legal conclusions on which the preliminary results are based;

(ii) The net subsidy, if any, during the period of review stated on a country-wide basis, except as provided in paragraph (d) or (f) of this section;

(iii) A description of official changes in the subsidy programs made by the government of the affected country that affect the cash deposit of estimated countervailing duties; and

(iv) For an agreement, the Secretary's preliminary conclusions with respect to the status of, and compliance with, the agreement;

(5) Publish in the **Federal Register** a notice of "Preliminary Results of Countervailing Duty Administrative Review," including the net subsidy, if any, the estimated net subsidy for cash deposit purposes, and an invitation for argument consistent with § 355.39, and notify all parties to the proceeding;

(6) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the preliminary results;

(7) Not later than 365 days after the month of the Secretary's initiation of the review, issue final results of review that include:

(i) The factual and legal conclusions on which the final results are based;

(ii) The net subsidy, if any, during the period of review stated on a county-wide basis, except as provided in paragraph (d) or (f) of this section;

(iii) A description of official changes in the subsidy programs, made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the cash deposit of estimated countervailing duties; and

(iv) For an agreement, the Secretary's conclusions with respect to the status of, and compliance with, the agreement;

(8) Publish in the **Federal Register** a notice of "Final Results of Countervailing Duty Administrative Review," including the net subsidy, if any, and the estimated net subsidy for cash deposit purposes, and notify all parties to the proceeding;

(9) Promptly after publication of the notice of final results, instruct the Customs Service to assess countervailing duties on the merchandise described in paragraph (b) of this section and to collect a cash deposit of estimated countervailing duties on future entires. Both the assessment and the cash deposit will be at the rates found in the final results of review, calculated on a country-wide basis, except as provided in paragraph (d) or (f) of this section.

(d) *Calculation of Individual Rates.* (1) If a producer or exporter is government-owned, the Secretary will, and to the extent practicable for other producers or exporters the Secretary may, review whether a significant differential existed, during the period under review, between the net subsidy received by an individual producer or exporter of the merchandise and the weighted-average net subsidy calculated on a country-wide basis.

(2) If the Secretary decides that an individual (including government-owned) producer or exporter received a significantly different net subsidy during the period, the Secretary will state in the final results an individual rate for that person, and that rate will be the basis for the assessment of countervailing duties and, except as provided in paragraph (c)(7)(iii) of this section, the cash deposit of estimated countervailing duties for that person.

(3) A significant differential is a difference of the greater of at least 10 percentage points, or 25 percent, from the weighted-average net subsidy calculated on a country-wide basis.

(e) *Possible Cancellation of Revision of Suspension Agreement.* If during an administrative review, the Secretary determines or has reason to believe that the signatory foreign government or exporters have violated a suspension agreement or that the agreement no longer meets the requirements of § 355.18, the Secretary will take appropriate action under § 355.19. The Secretary may toll the time limit is subsection (c)(7) while taking action under § 355.19(b).

(f) *Review of Individual Producer or Exporter.* For an administrative review requested under paragraph (a)(2) of this section:

(1) The Secretary will verify whether there is a net subsidy on the merchandise covered by the request from any program that the Secretary:

(i) Previously found countervailable in the proceeding; or

(ii) Determines in the review to be countervailable.

(2) If the Secretary verifies that the certifications are complete and accurate with regard to paragraph (f)(1)(i) and verifies that there is no net subsidy described in paragraph (f)(1)(ii) of this section on the merchandise, the Secretary may issue and publish in the **Federal Register** final results for that person and take actions under paragraph (c)(9) of this section that include a zero rate of assessment and cash deposit.

(3) If the Secretary verifies that the certifications are complete and accurate with regard to paragraph (f)(1)(i) of this section but is unable to verify there is no net subsidy described in paragraph (f)(1)(ii) of this section on the merchandise, the Secretary will:

(i) Issue and publish final results for that person and take actions under paragraph (c)(9) of this section that include a rate based on the net subsidies found; and

(ii) Initiate an administrative review under paragraphs (b) and (c) of this section of all producers and exporters covered by the order, unless the Secretary is concurrently reviewing the same period, as a result of a request is concurrently reviewing the same period, as a result of a request under paragraph (a)(1) of this section.

(4) If the Secretary is unable to verify that the certifications are complete and accurate with regard to paragraph (f)(1)(i) of this section but verifies there is not net subsidy described in paragraph (f)(1)(ii) of this section on the merchandise, the Secretary will : (i) Issue and publish final results for that person and take actions under paragraph (c)(9) of this section that include a rate based on the previously or concurrently determined country-wide weighted-average rate.

(5) If the Secretary is unable to verify that the certifications are complete and accurate with regard to paragraph (f)(1)(i) of this section and is unable to verify that there is no net subsidy described in paragraph (f)(1)(ii) of this section on the merchandise, the Secretary will:

(i) Issue and publish final results for that person and take actions under paragraph (c)(9) of this section that include a rate based on the previously determined country-wide weighted-average rate plus the additional rate under paragraph (f)(1)(ii) of this section, or, if appropriate, the concurrently determined country-wide weighted-average rate; and

(ii) Initiate and administrative review under paragraphs (b) and (c) of this section of all producers and exporters covered by the order, unless the Secretary is concurrently reviewing the same period, as a result of a request under paragraph (a)(1) of this section.

(6) In addition to the actions described in (f)(4) and (5) of this section, if the Secretary is unable to verify that the certifications are complete and accurate with regard to paragraph (f)(1)(i) of this section, the Secretary will refuse to accept any other requests for review under paragraph (a)(2) of this section for the duration of the order.

(g) *Automatic Assessment of Duty.* (1) For orders, if the Secretary does not receive a timely request under paragraph (a)(1) or (a)(2) of this section, the Secretary, without additional notice, will instruct the Customs Service to assess countervailing duties on the merchandise described in paragraph (b) of this section, at rates equal to the cash deposit of or bond for estimated countervailing duties required on that merchandise at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

(2) If the Secretary receives a timely request under paragraph (a)(2) of this section and no request under paragraph (a)(1) of this section, the Secretary in accordance with paragraph (g)(1) of this section will instruct the Customs Service to assess countervailing duties and continue to collect the cash deposit on the merchandise not covered by the request.

(h) *Changed Circumstances Review.* (1) If the Secretary concludes from available information, including information in a request under this subsection for an administrative review, that changed circumstances sufficient to warrant a review exist, the Secretary will:

(i) Publish in the **Federal Register** a notice of "Initiation of Changed Circumstances Countervailing Duty Administrative Review;"

(ii) If necessary, send to appropriate interested parties or a sample of interested parties questionnaires requesting factual information for the review;

(iii) Issue preliminary results of review based on the available information that include the factual and legal conclusions on which the preliminary results are based and any action the Secretary proposes based on the preliminary results;

(iv) Publish in the **Federal Register** a notice of "Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review," including an invitation for argument consistent with § 355.39;

(v) Notify all parties to the proceeding of the preliminary results;

(vi) If appropriate, promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the preliminary results;

(vii) Not later than 270 days after the date of the Secretary's initiation of the review, issue final results of review that include the factual and legal conclusions on which the final results are based and any action, including action under paragraph (c)(9) of this section and § 355.25(d), that the Secretary will take based on the final results;

(viii) Publish in the **Federal Register** a notice of "Final Results of Changed Circumstances Countervailing Duty Administrative Review;" and

(ix) Notify all parties to the proceeding.

(2) The Secretary will not initiate an administrative review under this subsection before the end of the second annual anniversary month after the date of publication of the Secretary's affirmative preliminary determination or suspension of investigation, unless the Secretary finds that good cause exists.

(3) If the Secretary concludes that expedited action is warranted, the Secretary may combine the notices identified in paragraphs (h)(1)(i) and (h)(1)(iv) of this section in a notice of "Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review." In that event, the notification required in paragraph (h)(1)(v) of this section will be given to all interested parties included on the Department's service list described in § 355.31(h).

(i) *Review at the Direction of the President.* At the direction of the President or a designee, the Secretary will conduct an administrative review to determine if a net subsidy is being provided, with respect to the merchandise subject to an understanding or other kind of quantitative restriction agreement accepted under § 355.17(b) or § 355.18(b)(3). The Secretary will:

(1) Publish in the **Federal Register** a notice of "Initiation of Countervailing Duty Administrative Review at the Direction of the President" which will include a description of the merchandise, the period under review, and a summary of the available information which would, if accurate support the imposition of countervailing duties;

(2) Notify the Commission;

(3) Send to appropriate interested parties or a sample of interested parties, normally not later than 30 days after the date of publication of the notice of initiation, questionnaires requesting factural information for the review;

(4) Issue preliminary results of review, based on the available information, that include:

(i) The factural and legal conclusions on which the preliminary results are based;

(ii) The net subsidy, if any, during the period of review stated on a country-wide basis, except as provided in subsection (d); and

(iii) A description of official changes in the subsidy programs made by the government of the affected country that affect the estimated net subsidy;

(5) Publish in the **Federal Register** a notice of "Preliminary Results of Countervailing Duty Administrative Review at the Direction of the President," including the net subsidy, if any, the estimated net subsidy for cash deposit purposes, and an invitation for argument consistent with § 355.39;

(6) Notify the Commission and all parties to the proceeding;

(7) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the preliminary results;

(8) Issue final results of review that include:

(i) The factual and legal conclusions on which the final results are based;

(ii) The net subsidy, if any, during the period of review stated on a country-wide basis, except as provided in subsection (d); and

(iii) A description of official changes in the subsidy programs, made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the estimated net subsidy;

(9) Publish in the **Federal Register** a notice of "Final Results of Countervailing Duty Administrative Review at the Direction of the President," including the net subsidy, if any, and the estimated net subsidy; and

(10) Notify all parties to the proceeding.

(11) If the Secretary's final results of administrative review under this paragraph and the Commission's final results of review section 762(a)(2) of the Act are affirmative, the Secretary will:

(i) Publish in the **Federal Register** a "Countervailing Duty Order" under § 355.21 on or promptly after the date the agreement terminates; and

(ii) Order the suspension of liquidation of entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the countervailing duty order.

§ 355.23 Provisional measures deposit cap.

This section applies to the merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission's notice of affirmative final determination or, if the merchandise is from a country not entitled to an injury test for the merchandise, the date of the Secretary's notice of affirmative final determination. If the cash deposit or bond required under the Secretary's affirmative preliminary or affirmative final determination is different from the net subsidy the Secretary calculates under § 355.22, the Secretary will instruct the Customs Service to disregard the difference to the extent that the cash deposit or bond is less than the net subsidy, and to assess countervailing duties equal to the net subsidy calculated under § 355.22 if the cash deposit or bond is more than the net subsidy.

§ 355.24 Interest on certain overpayments and underpayments.

(a) *In general.* The Secretary will instruct the Customs Service to pay or collect, as appropriate, interest on the difference between the cash deposit of estimated countervailing duties and the assessed countervailing duties on entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of a countervailing duty order.

(b) *Rate.* The rate or rates of interest payable or collectible under paragraph (a) of this section for any period of time are the rates established under section 6621 of the Internal Revenue Code of 1954.

(c) *Period.* The Secretary will instruct the Customs Service to calculate interest for each entry from the date that a cash deposit is required to be deposited for the entry through the date of liquidation of the entry.

§ 355.25 Revocation of order; termination of suspended investigation.

(a) *Revocation or Termination Based on Absence of Subsidy.* (1) The Secretary may revoke an order or terminate a suspended investigation if the Secretary concludes that the government of the affected country:

(i) Has eliminated all subsidies on the merchandise by abolishing for the merchandise, for a period of at least three consecutive years, all programs that the Secretary has found countervailable; and

(ii) Is not likely to reinstate for the merchandise those programs or substitute substantially equivalent programs.

(2) The Secretary may revoke an order or terminate a suspended investigation if the Secretary concludes that all producers and exporters covered by the order or the suspension agreement:

(i) Have not applied for or received, for a period of at least five consecutive years, any net subsidy on the merchandise; and

(ii) Are not likely to apply for or receive any net subsidy on the merchandise from those programs the Secretary has found countervailable in any proceeding involving the affected country or from substantially equivalent programs.

(3) The Secretary may revoke an order in part if the Secretary concludes that one or more producers or exporters covered by the order:

(i) Have not applied for or received, for a period of at least five consecutive years, any net subsidy on the merchandise;

(ii) Are not likely to apply for or receive any net subsidy on the merchandise from those programs the Secretary has found countervailable in any proceeding involving the affected country or from substantially equivalent programs; and

(iii) For producers or exporters that the Secretary previously has determined to have received any net subsidy on the merchandise, agree to the immediate reinstatement of the order, as long as any producer or exporter is subject to the order, if the Secretary concludes under § 355.22(h) that the producer or exporter has received, subsequent to the revocation, any net subsidy on the merchandise.

(b) *Request for Revocation or Termination.* (1) During the third and subsequent annual anniversary months of the publication of an order or suspension of investigation (the calendar month in which the anniversary of the date of publication of the order or suspension occurred), the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (a)(1) of the section if the government submits with the request its certification that it has satisfied, during the period described in § 355.22(b)(1), the requirements of paragraph (a)(1)(i) of this section and that it shall not reinstate for the merchandise those programs or substitute substantially equivalent programs; or

(2) During the fifth and subsequent annual anniversary months of the publication of an order or suspended investigation, the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (a)(2) of this section if the government submits with the request:

(i) The certifications required under § 355.22(a)(2) for all producers and exporters covered by the order or suspension agreement; and

(ii) Those producers' and exporters' certifications that they shall not apply for or receive any net subsidy on the merchandise from any program described in paragraph (a)(2)(ii) of this section.

(3) During the fifth and subsequent annual anniversary months of publication of an order or suspension of investigation, a producer or exporter may request in writing that the Secretary revoke an order with regard to that person if the person submits with the request:

(i) The certifications required under § 355.22(a)(2);

(ii) The certifications described in paragraph (b)(2)(ii) of this section for the merchandise covered by the request; and

(iii) The agreement described in paragraph (a)(3)(iii) of this section.

(c) *Procedures.* (1) After receipt of a timely request under subsection (b), the Secretary will consider the request as including a request for an administrative review and will conduct a review under § 355.22(c).

(2) In addition to the requirements of § 355.22(c), the Secretary will:

(i) Publish with the notice of initiation, under § 355.22(c)(1), a notice of "Request for Revocation of Order (in Part)" or, if appropriate, "Request for Termination of Suspended Investigation;"

(ii) Conduct a verification, under § 355.37(a)(1)(ii);

(iii) Include in the preliminary results of review, under § 355.22(c)(4), the Secretary's decision whether there is a reasonable basis to believe that the requirements for revocation or termination are met;

(iv) If the Secretary's preliminary decision under paragraph (c)(2)(iii) of this section is affirmative, publish with the notice of preliminary results of review, under § 355.22(c)(5), a notice of "Intent to Revoke Order (in Part)" or, if appropriate, "Intent to Terminate Suspended Investigation;"

(v) Include in the final results of review, under § 355.22(c)(7), the Secretary's final decision whether the requirements for revocation or termination are met; and

(vi) If the Secretary's final decision under paragraph (v) is affirmative, publish with the notice of final results of review, under § 355.22(c)(8), a notice of "Revocation of Order (in Part)" or, if appropriate, "Termination of Suspended Investigation."

(3) If the Secretary revokes an order or revokes an order in part, the Secretary will order the suspension of liquidation ended for the merchandise covered by the revocation on the first day after the period under review, and will instruct the Customs Service to release the cash deposit or bond, if any.

(d) *Revocation or Termination Based on Changed Circumstances.* (1) The Secretary may revoke an order or terminate a suspended investigation if the Secretary concludes that the order or suspended investigation:

(i) Is no longer of interest to interested parties, as defined in paragraph (i) (3), (4), (5), and (6) of § 355.2; or

(ii) Other changed circumstances sufficient to warrant revocation or termination exist.

(2) If at any time the Secretary concludes from the available information, including an affirmative statement of no interest from the petitioner in the proceeding, that changed circumstances sufficient to warrant revocation or termination may exist, the Secretary will conduct an administrative review under § 355.22(h).

(3) In addition to the requirements of § 355.22(h), the Secretary will:

(i) Publish with the notice of initiation, under § 355.22(h)(1)(i), a notice of "Consideration of Revocation of Order (in Part)" or, if appropriate, "Consideration of Termination of Suspended Investigation;"

(ii) Conduct a verification, if appropriate, under § 355.37(a)(1)(iii);

(iii) Include in the preliminary results of review, under § 355.22(h)(1)(iii), the Secretary's decision whether there is a reasonable basis to believe that the requirements for revocation or termination based on changed circumstances are met;

(iv) If the Secretary's preliminary decision under paragraph (d)(3)(iii) of this section is affirmative, publish with the notice of preliminary results of review, under § 355.22(h)(1)(iv), a notice "Intent to Revoke Order (in Part)" or, if appropriate, "Intent to Terminate Suspended Investigation;"

(v) Include in the final results of review, under § 355.22(h)(1)(vii), the Secretary's final decision whether the requirements for revocation or termination based on changed circumstances are met; and

(vi) If the Secretary's final decision under paragraph (d)(3)(v) of the section is affirmative, publish with the notice of final results of review, under § 355.22(h)(1)(viii), a notice of "Revocation of Order (in Part)" or, if appropriate, "Termination of Suspended Investigation."

(4)(i) If for four consecutive annual anniversary months no interested party requested an administrative review, under § 355.22(a), of an order or suspended investigation, not later than the first day of the fifth consecutive annual anniversary month, the Secretary will publish in the **Federal Register**, a notice of "Intent to Revoke Order" or, if appropriate, "Intent to Terminate Suspended Investigation."

(ii) Not later than the date of publication of the notice described in paragraph (d)(1) of this section, the Secretary will serve written notice of the intent to revoke or terminate on each party to the proceeding listed on the Department's service list and on any other person which the Secretary has reason to believe produces or sells a like product in the United States.

(iii) If by the last day of that fifth annual anniversary month no interested party objects, or requests an administrative review under § 355.22(a), the Secretary at that time will conclude that the requirements of paragraph (d)(1)(i) of this section for revocation or termination are met, revoke the order or terminate the suspended investigation, and publish in the **Federal Register** the notice described in paragraph (d)(3)(vi) of this section.

(5) If the Secretary under this paragraph revokes an order or revokes an order in part, the Secretary will order this suspension of liquidation ended for the merchandise covered by the revocation on the effective date of the notice of revocation, and will instruct the Customs Service to release the cash deposit or bond, if any.

(e) *Revocation or Termination Based on Injury Reconsideration.* If the Commission issues negative final results of administrative review under section 751(b) of the Act, the Secretary will revoke the countervailing duty order or terminate the suspended countervailing duty investigation, and will publish in the **Federal Register** a notice of "Revocation of Countervailing Duty Order" or, if appropriate, "Termination of Suspended Countervailing Duty Investigation."

Subpart C—Information and Argument

§ 355.31 Submission of factual information

(a) *Time Limits in General.* (1) All submissions of factual information for the Secretary's consideration shall be submitted not later than:

(i) For the Secretary's final determination, the day before the scheduled date on which the verification is to commence; or

(ii) For the Secretary's final results of an administrative review, the earlier of the date of publication of the notice of preliminary results of review or 180 days after the date of publication of the notice of initiation of the review.

(2) The Secretary will not consider in the final determination or the final results, or retain in the record of the proceeding, any factual information submitted after the applicable time limit.

(b) *Questionnaire Responses and Other Submissions on Request.* (1) Notwithstanding paragraph (a) of this section, the Secretary may request any person to submit factual information at any time during a proceeding.

(2) In the Secretary's written request to an interested party for a response to a questionnaire or for other factual information, the Secretary will specify the time limit for response. The

Secretary normally will not consider or retain in the record of the proceeding unsolicited questionnaire responses, and in no event will the Secretary consider unsolicited questionnaire responses submitted after the date of publication of the Secretary's preliminary determination.

(3) Ordinarily, the Secretary will not extend the time limit stated in the questionnaire or request for other factual information. Before the time limit expires, the recipient of the Secretary's request may request an extension. The request must be in writing and state the reasons for the request. Only the following employees of the Department may approve an extension: The Deputy Assistant Secretary for Import Administration, the Director of the Office of Investigations, the Director of the Office of Compliance, and the division director responsible for the proceeding. An extension must be approved in writing.

(4) Subject to the other provisions of this subsection, questionnaire responses in administrative reviews must be submitted not later than 60 days after the date of receipt of the questionnaire.

(c) *Time Limits for Certain Allegations.* (1) Except for an allegation of upstream subsidies submitted in an investigation (see §§ 355.15(d) and 355.20(b)), the Secretary will not consider any subsidy allegation submitted by the petitioner or other interested party, as defined in paragraph (i) (3), (4), (5), or (6) of § 355.2, later than:

(i) In an investigation, the twentieth day after the date of publication of the notice of initiation; or

(ii) In an administrative review, 120 days after the date of publication of the notice of initiation of the review.

(2) The Secretary will not consider any allegation in an investigation that the petitioner lacks standing unless the allegation is submitted, together with supporting factual information, not later than 10 days before the scheduled date for the Secretary's preliminary determination.

(3) Any interested party may request in writing not later than the time limits specified in paragraph (c) (1) or (2) of this section, as applicable, an extension of those time limits. If the Assistant Secretary for Trade Administration in an investigation, or the Deputy Assistant Secretary for Import Administration in an administrative review, concludes that an extension would facilitate the proper administration of the law, the Assistant Secretary or Deputy Assistant Secretary may grant an extension of not longer than 10 days in an investigation or 30 days in an administrative review.

(d) *Where to File; Time of Filing.* Address and submit documents to the Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th St., N.W., Washington, D.C. 20230, between the hours of 8:30 a.m. and 5:00 p.m. on government business days. For all time limits in this part, the Secretary will consider documents received when stamped by the Central Records Unit with the date and time of receipt. If the time limit expires on a non-business day, the Secretary will accept documents that are filed on the next following government business day.

(e) *Format and Number of Copies.*— (1) *In General.* Unless the Secretary alters the requirements of this paragraph, submitters shall make all submissions in the format specified in this subsection. The Secretary may refuse to accept for the record of the proceeding any submission that does not conform to the requirements of this paragraph.

(2) *Documents.* In an investigation, submit 10 copies of any document and, if a person has requested that the Secretary treat portions of the document as proprietary information, submit five copies of a public version of the document, including the public summary required under § 355.32(b) as a substitute for the portions for which the person has requested proprietary treatment. In an administrative review submit five copies and three copies respectively. In all proceedings, submit documents on letter-size paper, double-spaced, and securely bind each copy as a single document with any letter of transmittal as the first page of the document. Mark the first page of each document in the upper right hand corner with the following information in the following format: (i) On the first line, except for a petition, the Department case number; (ii) on the second line, the total number of pages in the document including cover pages, appendices, and any numbered pages; (iii) on the third line, state whether the document is for an investigation or an administrative review and, if the latter, the period of review; and (iv) on the fourth and subsequent lines, state whether or not the document contains classified, privileged, or proprietary information and the applicable page numbers.

(3) *Computer Tapes.* The Secretary may require submission of factual information on computer tape unless the Secretary decides that the submitter does not maintain records in computerized form or otherwise cannot supply the requested information on computer tape without unreasonable additional burden in time and expense.

(f) *Translation to English.* Unless the Secretary waives in writing this requirement for an individual document, any document submitted which is in a foreign language must be accompanied by an English translator.

(g) *Service of Copies on Other Parties.* The submitter of a document shall serve a copy, by mail or personal service, on the government of the affected country and any interested party on the Department's service list. The submitter shall attach to each document a certificate of service listing the parties served and, for each, the date and method of service.

(h) *Service List.* The Central Records Unit will maintain and make available a service list for each proceeding. Each interested party who asks to be on the service list shall designate a person to receive service of documents filed in a proceeding.

§ 355.32 Request for proprietary treatment of information.

(a) *Submission and Content of request.* (1) Any person who submits factual information to the Secretary in connection with a proceeding may request that the Secretary treat that information or any specified part, as proprietary.

(2) The submitter shall identify proprietary information on each page by placing brackets around the proprietary information and clearly stating at the top of each page "Proprietary Treatment Requested." The submitter shall provide a full explanation why each piece of factual information subject to the request is entitled to proprietary treatment under § 355.4. The request and explanation shall be a part of or securely bound with the document containing the information.

(b) *Public Summary.* All are requests for proprietary treatment shall include or be accompanied by:

(1) An adequate public summary of all proprietary information incorporated in the public version of the document (Generally, numeric data are adequately summarized if grouped or presented in terms of indices or figures within 10 percent of the actual figure, and if an individual portion of the data is voluminous, at least one percent of that portion is individually summarized in this manner.); or

(2) A statement itemizing those portions of the proprietary information which cannot be summarized adequately and all arguments supporting that conclusion for each portion.

(c) *Agreement to Release.* All requests for proprietary treatment shall include either an agreement to permit disclosure under administrative protective order, or a statement itemizing which portions of the proprietary information should not be released under administrative protective order and all arguments supporting that conclusion for each portion. The Secretary ordinarily will not provide the submitter further opportunity for argument on whether to grant a request for disclosure under administrative protective order.

(d) *Return of Information as a Result of Nonconforming Request.* The Secretary may return to the submitter any factual information for which the submitter requested proprietary treatment when the request does not conform to the requirements of this section. If the Secretary returns the information, the Secretary will provide an explanation of the reasons why it does not conform and will not consider it unless it is resubmitted with a new request which complies with the requirements of this section not later than 48 hours after the return.

(e) *Status During Consideration of Request.* While considering whether to grant a request for proprietary treatment, the Secretary will not disclose or make public the information. The Secretary normally will decide no later than 14 days after the Secretary receives the request.

(f) *Treatment of Proprietary Information.* The Secretary may disclose factual information which the Secretary decides is proprietary only to: (1) A representative of an interested party who requests and is granted an admininstrative protective order under § 355.34;

(2) An employee of the Department of Commerce directly involved in the proceeding for which the information is submitted;

(3) An employee of the Commission directly involved in the proceeding for which the information is submitted;

(4) An employee of the Customs Service for use in connection with a fraud investigation concerning the merchandise; and

(5) Any person to whom the submitter specifically authorizes (in writing) disclosure. Unless the Secretary otherwise provides, the person to whom the Secretary discloses information shall not disclose the information to any other person.

(g) *Denial of Request for Proprietary Treatment.* If the Secretary decides that the factual information does not warrant proprietary treatment in whole or in part, the Secretary will notify the submitter. Unless the submitter agrees that the information be considered public, the Secretary will return it and not consider it in the proceeding.

§ 353.33 Information exempt from disclosure.

Privileged or classified information is exempt from disclosure to the public or to representatives of interested parties.

§ 355.34 Disclosure of proprietary information under administrative protective order.

(a) *In General.* The Secretary may disclose proprietary information under an administrative protective order to an attorney or other representative of an interested party if the Secretary decides that the representative has stated a sufficient need for disclosure and would adequately protect the proprietary status of the information disclosed. In deciding whether to disclose information under administrative protective order, the Secretary will consider the probable effectiveness of sanctions for violation of the order, including those described in paragraph (b)(4) of this section. The Secretary will also consider the ability of the Secretary to obtain factual information in the future.

(b) *Request for Disclosure.* (1) A representative must file a request for disclosure under administrative protective order not later than 10 days after the later of:

(i) The date of publication in the **Federal Register** of the notice of initiation under §§ 355.11 or 355.13, or the notice of initiation of administrative review under § 355.22; or

(ii) The date the representative's client or employer becomes a party to the proceeding, but in no event later than 10 days after the date of publication of the Secretary's preliminary determination or preliminary results of administrative review.

(2) The representative must file the request for disclosure on the standard form provided by the Secretary (Form ITA-367). The standard form will require only such particularity in the description of the requested information as is consistent with both the criteria the Secretary uses to decide whether to disclose, and with the fact that a request may be made for factual information not yet submitted.

(3) The request shall obligate the representative:

(i) Not to disclose the proprietary information to anyone other than the submitter and other persons authorized by an administrative protective order to have access to the information;

(ii) To use the information solely for the segment of the proceeding then in progress;

(iii) To ensure the security of the proprietary information at all times; and

(iv) To report promptly to the Secretary any apparent violation of the terms of the protective order.

(4) The request shall contain an acknowledgment by the representative that violation of the order may:

(i) Subject the following persons to prohibition from practice before the Department for up to seven years following the Secretary's decision that a violation has occurred:

(A) The representative;

(B) Any firm or business of which the representative is a partner, associate, or employee, and

(C) The representative's partners, associates, employer, and employees;

(ii) In the case of an attorney, lead to the Secretary's referral of the violation to the disciplinary panel of appropriate bar associations; and

(iii) Subject the representative and the client or employer to other administrative sanctions, including removal from the official record of any factual information or written argument submitted on behalf of the interested party.

(c) *Opportunity to Withdraw Proprietary Information.* If the Secretary decides to disclose proprietary information under administrative protective order without the consent of the submitter, the Secretary will notify the submitter of the decision and permit the submitter to withdraw the information from the official record within 24 hours. The Secretary will not consider withdrawn information.

(d) *Disposition of Proprietary Information Disclosed Under Administrative Protective Order.* (1) At the expiration of the time for filing for judicial review of a decision by the Secretary, if there is no filing by any party to the proceeding, or at an earlier date the Secretary decides appropriate, the representative must return or destroy all proprietary information released under this section and all other materials containing the proprietary information (such as notes or memoranda). The representative at that time must certify to the Secretary full compliance with the terms of the protective order and the return or destruction of all proprietary information.

(2) The representative of a party to the proceeding that files for judicial review or intervenes in the judicial review may retain the proprietary information, provided that the party applies for a

court protective order for the information not later than 15 days after the Secretary files the administrative record with the court. If the court denies the party's application for a court protective order, the representative must return or destroy the proprietary information and all other materials containing the proprietary information not later than 48 hours after the court's decision and certify to the Secretary as provided under paragraph (d)(1).

(e) *Violation of Administrative Protective Order.* The Secretary will refer to the General Counsel of the Department any allegation of a violation of an administrative protective order, and the General Counsel will then investigate the allegation and prepare a report and recommendation (including recommended sanctions, if appropriate) for the Secretary, who will decide.

§355.35, Ex parte meeting.

The Secretary will prepare for the official record a written memorandum of any *ex parte* meeting between any person providing factual information in connection with a proceeding and the person to whom the Secretary has delegated the authority to make determinations or the person making a final recommendation to that person. The memorandum will include the date, time, and place of the meeting, the identity and affiliation of all persons present, and a public summary of the factual information submitted.

§ 355.36 Subsidy practice discovered during investigation or review.

(a) *Inclusion in Proceeding.* If during an investigation or an administrative review the Secretary discovers a practice which appears to provide a subsidy with respect to the merchandise and the practice was not alleged or examined in the proceeding, the Secretary will examine the practice if the Secretary concludes that sufficient time remains before the scheduled date for the Secretary's final determination or final results of review.

(b) *Deferral of Examination.* If the Secretary concludes that insufficient time remains, before the scheduled date for the Secretary's final determination or final results of review, to examine the practice described in paragraph (a), the Secretary will:

(1) During an investigation, allow the petitioner to withdraw the petition without prejudice and resubmit it with an allegation with regard to the newly discovered subsidy practice; or

(2) During an investigation or review, defer consideration of the newly discovered practice until the next review under § 355.22(c).

(c) *Notice.* The Secretary will notify the parties to the proceeding of any practice the Secretary discovered and whether or not it will be included in the then on-going proceeding.

§ 355.37 Verification of information.

(a) *In General.* (1) The Secretary will verify all factual information the Secretary relies on in:

(i) A final determination under § 355.18(i) or 355.20;

(ii) A revocation under § 355.25; and

(iii) The final results of an administrative review under § 355.22(c), (h), or (i) if the Secretary decides that good cause for verification exists; or

(iv) The final results of an administrative review under § 355.22(c) if:

(A) An interested party, as defined in paragraph (i) (3), (4), (5), or (6) of § 355.2, not later than 120 days after the date of publication of the notice of initiation of review, submits a written request for verification; and

(B) The Secretary conducted no verification under this paragraph during either of the two immediately preceding administrative reviews.

(2) If the Secretary decides that, because of the large number of producers and exporters included in an administrative review, it is impractical to verify relevant factual information for each person, the Secretary may select and verify a sample. The Secretary will apply the results of the verification of the sample to all producers and exporters included in the review.

(b) *Notice of verification.* In publishing a notice of final determination, revocation, or final results of administrative review, the Secretary will report the methods and procedures used to verify under this section.

(c) *Procedures for Verification.* In verifying under this section, the Secretary will request the government of the affected country to allow employees of the Department to visit with producers, exporters, or government agencies in order to verify the accuracy of submitted factual information. As part of the verification, employees of the Department will request access to all files, records, and personnel of the producers, exporters, or the government agencies which the Secretary considers relevant to factual information submitted by those persons.

§ 355.38 Best information available.

(a) *Use of Best Information Available.* The Secretary may use the best information available whenever the Secretary:

(1) Does not receive a complete, accurate, and timely response to the Secretary's request for factual information; or

(2) Is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted.

(b) *What Is Best Information Available.* The best information available includes the factual information submitted in support of the petition or subsequently submitted by interested parties, as defined in paragraph (i) (3), (4), (5), or (6) of § 355.2. If an interested party refuses to provide factual information requested by the Secretary or otherwise impedes the proceeding, the Secretary may take into account in determining what is the best information available.

§ 355.39 Written argument and hearings.

(a) *Written Argument.* The Secretary will consider in making the final determination under §§ 355.18(i) or 355.20 or final results under § 355.22 only written arguments in case or rebuttal briefs filed within the time limits in this section. The Secretary will not consider or retain in the record of the proceeding any written argument, unless requested by the Secretary, that is submitted after the time limits specified in this section. At any time during the proceeding, the Secretary may request written argument on any issue from any interested party or United States government agency.

(b) *Case Brief; Request for Hearing.* Not later than 35 days after the date of publication of the Secretary's preliminary determination in an investigation, unless the Secretary alters this time limit, and not later than 30 days after the date of publication of the preliminary results of administrative review, any interested party or United States government agency may submit a "case brief." The case brief shall:

(1) Separately identify and present in full all arguments that continue in the submitter's view to be relevant to the Secretary's final determination or final results, including any arguments presented before the date of publication of the preliminary determination or preliminary results; and

(2) Include any request for the Secretary to hold a public hearing on any of the arguments raised in the case brief. At a hearing in an administrative review, an interested party or agency may make an affirmative presentation only on arguments included in that party's case brief and identified in the brief for affirmative presentation at the hearing.

(c) *Rebuttal Brief; Request for Hearing.* Not later than the time limit stated in the notice of the Secretary's preliminary determination or preliminary results, ordinarily seven days after the time limit for filing the case brief, any interested party or United States government agency may submit a "rebuttal brief." The rebuttal brief shall:

(1) Only respond to arguments raised in case briefs and shall separately identify and present in full all rebuttal arguments; and

(2) Include any request for the Secretary to hold a public hearing on any of the arguments raised in the rebuttal brief. At a hearing in an administrative review, an interested party or agency may make a rebuttal presentation only on arguments included in that party's rebuttal brief and identified in the brief for rebuttal presentation at the hearing.

(d) *Service of Briefs.* The submitter of either a case or rebuttal brief shall serve a copy of that brief on the government of the affected country and on any interested party on the Department's service list. If the party has designated under § 355.31(h) an agent in the United States, serve either by personal service on the same day the brief is filed with the Secretary or by overnight mail or courier on the next day and, if the party has designated an agent outside the United States, serve by first class airmail. The submitter shall attach to each brief a certificate of service listing the parties served and, for each, the date and method of service.

(e) *Hearings.* If an interested party submits a request under paragraph (b) or (c) of this section, the Secretary will hold a public hearing on the date stated in the notice of the Secretary's preliminary determination or preliminary results of administrative review, unless the Secretary alters the date. Ordinarily, the hearing will be held, in an investigation, seven days after the scheduled date for submission of rebuttal briefs and, in an administrative review, 14 days after the scheduled date for submission of rebuttal briefs.

(1) The Secretary will place a verbatim transcript of the hearing in the public and official records of the proceeding and will announce at the hearing how interested parties may obtain copies of the transcript.

(2) One of the following employees of the Department will chair the hearing: the Deputy Assistant Secretary for Import Administration, the Director of the Office of Investigations, the Director of the Office of Compliance or another supervisory employee of the Department responsible for the proceeding.

(3) The hearing is not subject to the Administrative Procedure Act. Witness testimony, if any, shall not be under oath or subject to cross-examination by another interested party or witness. During the hearing, the chair may question any interested party or witness and may permit interested parties to present an additional round of rebuttal argument.

(f) *Where to File; Time of Filing.* The requirements in § 355.31(d) apply to this section.

(g) *Format and Number of Copies.* The requirements in § 355.31(e) apply to this section, except that in an administrative review submit 10 copies of each brief and five copies of the public version, including the public summary required under § 355.32(b).

Subpart D—Quota Cheese Subsidy Determinations

§ 355.41 Definition of "subsidy".

For purposes of this subpart, "subsidy" means both "subsidy" and "net subsidy" as defined in sections 771(5) and 771(6) of the Act.

§ 355.42 Annual list and quarterly update.

(a) *Annual List.* Not later than January 1st of each year, the Secretary, in consultation with the Secretary of Agriculture, will determine based on the available information whether any foreign government is providing a subsidy, as defined in § 355.41, with respect to any article of quota cheese, as defined in the **Federal Register** a list of the type amount of each subsidy. The Secretary will incorporate in each annual list any changes and additional subsidies for the preceding calendar year determined under paragraph (b) of this section or under § 355.43(b).

(b) *Quarterly Update.* Not later than April 1st, July 1st, and October 1st of each year, the Secretary, in consultation with the Secretary of Agriculture, will determine based on the available information whether there have been any changes in or additions to the latest annual list, and will publish in the **Federal Register** a quarterly update of those changes and additions.

§ 355.43 Determination upon request.

(a) *Request for determination.* Any person, including the Secretary of Agriculture, who has reason to believe there have been changes in or additions to the latest annual list may request in writing that the Secretary determine whether there are any changes or additions. The person shall file the request at the time and place specified in § 355.31(d). The request shall allege either a change in the type or amount of any subsidy included in the latest annual list or quarterly update or an additional subsidy not included in that list or update provided by a foreign government, and shall contain the following, to the extent reasonably available to the requesting person:

(1) The name and address of the person;

(2) The article of quota cheese allegedly benefitting from the changed or additional subsidy;

(3) The country of origin of the article of quota cheese; and

(4) The alleged subsidy or charged subsidy and relevant factual information (particularly documentary evidence) regarding the alleged changed or additional subsidy including the authority under which it is provided, the manner in which it is paid, and the value of the subsidy to producers or exporters of the article.

The requirements of § 355.31 (d) and (f) apply to this section.

(b) *Determination.* Not later than 30 days after receiving an acceptable request, the Secretary will:

(1) In consultation with the Secretary of Agriculture, determine based on the available information whether there has been any change in the type or amount of any subsidy included in the latest annual list or quarterly update or an additional subsidy not included in that list or update is being provided by a foreign government;

(2) Notify the Secretary of Agriculture and the person making the request of the determination; and

(3) Promptly publish in the **Federal Register** notice of any changes or additions.

§ 355.44 Complaint or price-undercutting by subsidized imports.

Upon receipt of a complaint filed with the Secretary of Agriculture under section 702(b) of the Trade Agreements Act concerning price-undercutting by subsidized imports, the Secretary will promptly determine, under § 355.43(b), whether or not the alleged subsidies are included in or should be added to the latest annual list or quarterly update. The Department of Agriculture regulations concerning complaints of price-cutting by subsidized imports of quota cheese are published in 7 CFR Part 6.

§ 355.45 Access to information.

Subpart C of this part applies to factual information submitted in connection with this subpart.

Annex I—List of Countries Under the Agreement.

1. As of the date of publication of this part, the Agreement applies between the United States and the following countries, as determined under section 2(b) of the Trade Agreements Act of 1979: Australia, Austria, Brazil, Canada, Chile, Egypt, European Economic Community (accepted for member states), United Kingdom for Hong Kong, Indonesia, Finland, India, Japan, Korea, Norway, Pakistan, Philippines, Portugal, Spain, Sweden, Switzerland, Turkey, and Uruguay. See section 701(b)(1) of the Act.

2. Taiwan and Mexico have assumed obligations with respect to the United States which the President has determined are substantially equivalent to obligations under the Agreement. See section 701(b)(2) of the Act.

3. The following countries are entitled to an injury test under section 701(b)(3) of the Act: Venezuela, Honduras, Nepal, North Yemen, El Salvador, Paraguay, and Liberia.

For further information, contact the Office of Policy, Import Administration, at the address stated in § 355.31(d).

[FR Doc. 85-13751 Filed 6-7-85; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 31

Conditions Under Which Non-Eligible Students May Attend Bureau of Indian Affairs-Funded Schools

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rules; Extension of comment period.

SUMMARY: This notice extends the comment period from June 10, 1985 to July 5, 1985, on the proposed rule concerning conditions under which non-Indians and Indians of less than one-quarter degree blood quantum of a Federally recognized tribe may attend Bureau-funded schools. This proposed rule was published in the **Federal Register** on May 10, 1985 (50 FR 19701). The extension of the comment period is in response to requests received from the public to allow additional time for comment.

DATE: Comments by July 5, 1985.

ADDRESS: Comments should be mailed to Acting Director, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets, N.W., Room 3512, Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Holmgren, Washington, D.C. at (202) 343-4071.

John W. Fritz,
Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85-14084 Filed 6-7-85; 11:20 am]
BILLING CODE 4310-02-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Proposed rule change and request for comments.

SUMMARY: As part of its continuing effort to enhance equity among similarly situated offenders, as well as to assist in relieving prison overcrowding, the Parole Commission added a provision to its rules concerning the referral to the Bureau of Prisons, and ultimately to the sentencing court, of certain selected cases where the Commission would recommend reduction of a judicially imposed minimum sentence. Due to an extremely small number of cases which have been referred to the sentencing court for reduction by the Bureau of Prisons and to the amount of staff time consumed to identify, prepare and process the cases, the Director of the Bureau of Prisons has requested that the Parole Commission jointly discontinue the program. Pursuant to that request, the Parole Commission seeks public comment concerning the proposal to delete § 2.62 from 28 CFR Part 2.

DATE: Public comment must be received by July 15, 1985.

ADDRESS: Comments should be addressed to: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-4980.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION: As part of the Parole Commission's response to a request from the Bureau of Prisons and Department of Justice for assistance in addressing the problem of federal prison overcrowding and pursuant to its mandate to provide consistency in release dates for similarly situated offenders by reducing unwarranted sentence disparity, the Commission published a proposed rule in the **Federal Register** (48 FR 22949, May 23, 1983) designed to relieve prison overcrowding by referring selected cases to the Bureau of Prisons which then might petition the sentencing court for reduction of judicially imposed minimum sentences. After receiving favorable public comment, the Parole Commission published a final rule in the **Federal Register** (48 FR 44525, September 29, 1983) promulgating § 2.62 of 28 CFR Part 2, effective October 1, 1983.

The rule involved a joint effort by the Bureau of Prisons and the Parole Commission (1) to identify certain prisoners who could be safely released from prison under current Parole Commission standards (see 18 U.S.C. 4206 and 28 CFR 2.20) but who must remain in custody beyond the maximum of the applicable guideline range because of a judicially imposed minimum sentence and (2) to seek a reduction of the minimum sentence in such cases through the provisions of 18 U.S.C. 4205(g). Under 18 U.S.C. 4205(g), the Director of the Bureau of Prisons may at any time petition the sentencing court to reduce a minimum term and the court can act on such application without convening a hearing. As contemplated by the rule, referrals to the sentencing court were to be made by the Bureau in the identified and approved cases for a reduction to the time required by the maximum of the applicable guideline range. Prisoners whose offenses had been rated as Category Eight (the most serious offenses) under the guidelines were not eligible for referrals under the rule because there is no maximum to the Category Eight guideline range.

Pursuant to this rule, the Parole Commission first reviewed 1,473 files of prisoners previously given presumptive parole dates at the completion of the minimum sentence for possible sentence reduction recommendations to the Bureau of Prisons. After hearing examiner and Regional Commissioner consideration and review, 401 cases, where the disparity between the minimum sentence and the maximum of the applicable guideline range appeared unwarranted, were identified and forwarded to the Bureau. The remainder were rejected either because of insufficient time remaining on the sentence to fully process the motion or because there existed in the files aggravating factors that could have caused the Commission itself to go above the applicable guidelines. The Parole Commission next began reviewing current files for possible

recommendation, identifying another 171 cases for reduction recommendation. If all of these 572 recommendations had been accepted by the Bureau and, eventually, by the sentencing judge, a savings of 9,591 prisoner incarceration months or about 800 prisoner incarceration years could have been realized.

According to data supplied by the Bureau of Prisons, since December 1983, only 74 of the 572 cases submitted by the Parole Commission made it through the Bureau's processing for consideration by its Director. He denied 68 of these, approving 6 for further review by the appropriate U.S. attorney. Three of these six were referred to the sentencing judges after U.S. attorney review, with the sentencing judge actually reducing the minimum in only two cases.

As a result, in January 1985, the Director of the Bureau of Prisons, citing the extremely small number of cases actually referred to sentencing courts and the amount of staff time involved in identifying, preparing and processing the cases, proposed that the program be discontinued. The Parole Commission now seeks public comment on whether to accept that recommendation and to discontinue its efforts by deleting 28 CFR 2.62 from its rules.

This proposed rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedures, Prisoners, Probation and parole.

1. The authority citation for 28 CFR Part 2 would be revised to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Accordingly, 28 CFR Part 2 is amended by removing § 2.62.

Dated: May 13, 1985.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 85-13376 Filed 6-7-85; 8:45 am]

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Proposed rule and request for comments.

SUMMARY: The Parole Commission proposes to require all parolees (and mandatory releasees) to satisfy outstanding court orders as a condition of their release, adding this condition to its Conditions of Release. 28 CFR 2.40. While mandated to add this condition as regards fines by the provisions of the Criminal Fine Enforcement Act of 1984, Pub. L. 98-596, and as regards restitution orders by the provisions of the Victim and Witness Protection Act of 1982, Pub. L. 97-291, the Parole Commission proposes additionally to require the satisfaction of court ordered child support or alimony payments, or other court orders. Furthermore, since current conditions of release already obligate a parolee to "not violate any law" (28 CFR 2.40(a)(6)) and to "support his legal dependents" (28 CFR 2.40(a)(8)), the proposed changes will serve to clarify those existing obligations rather than resulting in totally new or additional requirements. To facilitate the payment of these obligations, the Parole Commission proposes to require the parolee to provide relevant financial information and to cooperate, when appropriate, in the establishment of an installment payment plan. Other amendments are proposed to clarify and conform language to the terms of this new release condition.

DATE: Public comment must be received by July 15, 1985.

ADDRESS: Comments should be addressed to: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815. Telephone (301) 492-4980.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION: Currently the U.S. Parole Commission imposes several conditions on every grant of parole, conditions deemed necessary to provide adequate supervision and to protect the public welfare. The Commission is proposing to amend its set of conditions at 28 CFR 2.40 by adding the condition that parolees make a diligent effort to satisfy outstanding fines and other court ordered financial obligations such as restitution orders, child support and alimony and, to that end, that they supply financial information and develop installment payment plans. The new condition as to fines is required by the Criminal Fine Enforcement Act of 1984, Pub. L. 98-596 and the Parole Commission is proposing to lend equal weight to the enforcement of other court ordered financial obligations, as it did previously with restitution orders, by making their satisfaction a condition of parole.

In regard to this new condition of parole, several proposed procedures will apply. First, the parolee will meet with the U.S. Probation Officer to develop a written plan for the payment of the fine, restitution order, etc. The plan will include, among other things, a payment schedule and the amount to be paid at each installment. It will include also the following clause: "This plan, and the obligations described herein, are part of the conditions of my parole." The parolee will supply all financial information and records necessary to the development of the plan and will sign the plan, along with the U.S. Probation Officer. A copy of the signed plan will be forwarded to the Parole Commission.

As to the payment schedule and the amounts to be paid at each installment, the plan will include any relevant court ordered installment payment schedule. if no such installment payment schedule exists, one will be developed that takes into account, among other things, the amount of the fine (restitution order, etc.), any interest and penalties due as well as the parolee's employment status, earning ability, financial resources, and the economic burden that the payment of the obligation will impose on the parolee or his dependents. Where feasible, the installment payment term for fines and restitution orders should not exceed two years. When the parolee has an outstanding restitution order in addition to a fine or other financial obligation, the plan will give precedence to the satisfaction of the restitution order.

If the parolee refuses to accept the terms of the plan in general, refuses to accept the installment payment schedule, and/or refuses to sign the plan, the Parole Commission will then resolve any outstanding disputes as to terms and installment payment schedules, completing the plan as necessary and making the terms and schedules contained therein themselves a parole condition. Any changes to or modifications of the plan will be reduced to written form and signed by the parolee and the U.S. Probation Officer. A copy of the signed change or modification will be forwarded to the Parole Commission.

And, finally, if the parolee does not make diligent effort to make the payments according to the schedule in the plan, the U.S. Probation Officer will report such failure to the Parole Commission as a violation of the conditions of parole.

As a conforming amendment, the Parole Commission proposes to delete 28 CFR 2.7(b)(1). That subsection deals

with unsatisfied orders of restitution automatically becoming a condition of release. The proposed new condition renders this part of the subsection duplicative and thus unnecessary. The subsection also requires the inclusion of a payment plan, where feasible, as part of the prisoner's parole release plan. The Parole Commission will retain that requirement, but, for clarity reasons, proposes to amend the language and add it to 28 CFR 2.33 (Release Plans) as new § 2.33(d).

As a second conforming amendment, the Parole Commission proposes to amend the language of 28 CFR 2.7(b)(3), to delete it from 28 CFR 2.7 and to add it to 28 CFR 2.52 as new § 2.52(e). As presently drafted, the subsection deals with factors to be considered in determining whether to revoke parole for non-compliance with a condition of restitution. The proposal would require that the same factors be considered in determining revocation for non-compliance with a condition of fine, court ordered child support or alimony payment and other court ordered financial obligation. The new subsection would become part of 28 CFR 2.52 (Revocation Decisions). Finally, present 28 CFR 2.7(b)(2) would be redesignated 28 CFR 2.7(b).

This proposed rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedures, Prisoners, Probation and parole.

1. The authority citation for 28 CFR Part 2 would be revised to read: Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Accordingly, 28 CFR 2.40, Conditions of Release is proposed to be amended by adding new paragraph (a)(13) to read as follows:

§ 2.40 Conditions of release.

(a) * * *

(13) The parolee shall make a diligent effort to satisfy any fine, restitution order, court ordered child support or alimony payments and/or other court ordered financial obligation of a similar nature that has been, or may be, imposed, and shall provide such financial information as may be requested, by his Probation Officer, relevant to the payment of the obligation. If unable to pay the obligation in one sum, the parolee will cooperate with his Probation Officer in establishing an installment payment schedule.

3. Further, as conforming amendments, 28 CFR 2.7(b)(1) and 2.7(b)(3) are proposed to be removed and 28 CFR 2.7(b)(2) is proposed to be redesignated 28 CFR 2.7(b). Also, 28 CFR 2.33, Release Plans, is proposed to be amended by adding new paragraph (d) to read as follows:

§ 2.33 Release plans.

* * * * *

(d) When the prisoner has an unsatisfied fine or restitution order, a reasonable plan for payment [or performance of services, if so ordered by the court] shall, where feasible, be included in the parole release plan.

4. Finally, 28 CFR 2.52, Revocation Decisions, is proposed to be amended by adding new paragraph (e) to read as follows:

§ 2.52 Revocation decisions.

(e) In determining whether to revoke parole for noncompliance with a condition of fine, restitution, court ordered child support or alimony payments and/or other court ordered financial obligation, the Parole Commission shall consider the parolee's employment status, earning ability, financial resources, the willfulness of the failure to pay and any other special circumstances that may have a bearing on the matter. Revocation shall not be ordered unless the parolee is found to be deliberately evading or refusing compliance.

Dated: May 13, 1985.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 85-13377 Filed 6-7-85; 8:45 am]

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28 CFR Part 2

Parole, Release, Supervision and Recommitment of Prisoners, Youth Offenders, and Juvenile Deliquents; Proposed Changes in Policy Guidelines

AGENCY: Parole Commission, Justice.

ACTION: Proposed rule and request for comments.

SUMMARY: The Parole Commission proposes to make a number of changes in the Commission's paroling policy guidelines. First, separate guidelines for Youth/NARA cases would be eliminated; and the guideline ranges for certain lower severity, better risk offenders would be reduced. Second, this proposal would make a number of changes in the offense severity examples contained in the parole guidelines. Certain of the offense severity amendments will merely clarify present policy and improve the organization of the offense behavior examples, while others are expected to result in actual changes in time customarily served. Third, administrative parole violations resulting in revocation would be treated as if Category One offenses; and a conforming change in the recission guidelines would be made for escape.

DATE: Public comment must be received on or before August 9, 1985.

ADDRESS: Send comments to U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815; Attn: Peter B. Hoffman.

FOR FURTHER INFORMATION CONTACT: Peter B. Hoffman, Research Director, U.S. Parole Commission, telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION:

Background

The factors which the Commission must consider in evaluating the application of a federal prisoner for release on parole have been established by Congress at 18 U.S.C. 4206(a) (1976) which provides that:

If an eligible prisoner has substantially observed the rules of the institution or institutions to which he has been confined, and if the Commission, upon consideration of the nature and circumstance of the offense and the history and characteristics of the prisoner, determines:

(1) That release would not depreciate the seriousness of his offense or promote disrespect for the law; and

(2) That release would not jeopardize the public welfare; subject to the provisions of subsections (b) and (c) of this section, and pursuant to guidelines promulgated by the Commission pursuant to section 4203(a)(1), such prisoner shall be released.

Congress has mandated that the Commission establish paroling policy guidelines making explicit the Commission's national paroling policy (18 U.S.C. 4203 (1976)). The paroling policy guidelines that have been established pursuant to this statutory mandate (at 28 CFR 2.20) contain two dimensions. The first dimension contains a listing of offense behavior examples that provides a means by which the Commission may rate the seriousness of each prisoner's offense. The offense behavior examples are listed in eight categories. The second dimension is an actuarial table (salient factor score) which aids the Commission

in assessing the degree to which the applicant's background indicates likely success or failure on parole (i.e., whether release would jeopardize the public welfare).

For each combination of offense severity rating and degree of parole risk, the guidelines provide a range of months to be served (assuming the appropriate guideline range in the case under consideration, the Commission exercises its discretion to determine whether individual circumstances justify a decision above or below the indicated range. If a decision to require service of a term within the guidelines is reached, then the Commission also exercises discretion to determine at what point within the guidelines release is most appropriate.

In this manner, the Parole Commission discharges its complex duty of converting three separate judgments (as to prison conduct, the severity of the offense, and the risk that release would entail) into a term of imprisonment that reflects an appropriate balancing of each consideration.

Nature and Impact of the Proposed Changes

The proposed revisions to 28 CFR 2.20, 2.21, and 2.36 fall into three categories: (a) Elimination of the youth guideline ranges in § 2.20, and downward revision to the guideline ranges for certain of the lower severity, better risk cases; (b) revision of certain of the offense examples in the Offense Severity Index of § 2.20, and (c) revision of § 2.21 to treat administrative parole violation(s) leading to revocation as if a Category One offense for reparole guideline purposes, and revision of § 2.36 for escape cases to conform to the revision in §2.21.

(a) Revisions of the Guideline Ranges. Currently, three classes of prisoners are considered under the youth guideline ranges: any prisoner less than age 22 at the time of the offense; any prisoner sentenced under the Youth Corrections Act, regardless of age at the time of the offense; and any prisoner sentenced under the Narcotics Addict Rehabilitation Act. The Commission is proposing the elimination of separate guidelines for such offenders. It is proposed to use the adult guideline ranges for certain lower severity, better risk cases. The Commission believes that this revision will conform to the Sense of the Senate Resolution in the Comprehensive Crime Control Act of 1984 by providing heavier penalties for the more serious youth offenders while relying less on incarceration for certain of the lower severity, better risk cases.

(b) Revision of Certain Offense Examples in the Offense Behavior Severity Index. Certain of the proposed changes are for clarity; others add new offense examples or make substantive changes in the current offense examples which will impact upon the time served before parole. The proposed addition of offense example 213 adds a behavior previously not specifically covered in the offense severity index, as do the proposed amendments to 321(b)(2) and 331(f)(1), and the addition of Offense Example 631. The proposed amendments to the titles of Offense Examples 402 and 1161 are for clarity. The proposed amendments to offense Examples 811, 901(h), 1141, 1151, and 1152 would raise the offense severity level for specific offense behaviors. The proposed amendment to Definition 18 of Chapter Thirteen, Subchapter B conforms to an expanded legislative definition of this offense. The Commission also requests public comment on the addition and grading of environmental protection offenses (e.g., unlawful disposal of hazardous wastes).

Two important points should be kept in mind in evaluating these proposed changes. First, the examples within the severity categories are not intended to be used as a form of criminal code. They are merely guideposts for the exercise of discretion, and individual circumstances in actual cases may justify a decision or a severity rating different from that listed. Second, the examples are not comprehensive either as to all possible variations in circumstances or as to all types of behavior that are deemed criminal under federal law. Commonly recurring types have been selected and are defined in general terms so as to focus attention on what the Commission considers to be the most relevant factors (e.g., for drug offenses, the amount and purity of the illicit substance involved).

(c) Revision of the Reparole Guidelines for Administrative Parole Violators. The Commission is proposing to increase the penalties for parole violators with significant prior records by amending the reparole guidelines for prisoners with administrative violations to conform to the guidelines used for parole applicants with Category One (the least serious) offenses. Consequently, instead of a reparole guildeline range of $<=9$ months for all administrative violators, the applicable guideline range would be $<=8$, 8–12, or 12–16 months depending upon the prisoner's background characteristics as measured by the salient factor score (prior record, age, and history of opiate use). The Commission believes that this revision will more adequately sanction administrative violations.

While realizing the difficulties in making accurate projections of the impact of proposed guidelines changes on the prison population, the Commission believes that such projections are appropriately considered as one factor in the overall content of guideline revision. It is the Commission's estimate that the elimination of the youth Guideline ranges will increase the prison population by 400–500 prisoners; while the downward revision of the guideline ranges for the lower severity, better risk will decrease prison population by 200–250 prisoners. It is estimated that the proposed modification in the guideline ranges for administrative parole violators will increase the prison population by 200–250 prisoners. The revisions to the Offense Behavior Severity Index are estimated as increasing prison population by 50–100 prisoners. It is noted that these changes will not be immediate, but rather will occur over several years. Thus, it is estimated that the net impact of the proposed revisions will be to increase the prison population by 450–600 prisoners over the next several years.

Implementation

The Commission has previously adopted a policy that guideline changes requiring a greater period of confinement will not be applied retroativity to any prisoner who has received his or her initial hearing prior to the effective date of the final rule. The Commission will apply changes requiring a lesser period of confinement retroactively to prisoners already considered for parole. This reconsideration would be accomplished at the prisoner's next regularly scheduled hearing or review. Given the period specified for public comment, the Commission contemplates that the final rule would become effective in October 1985.

The Rule Making Process

The amendments proposed herein cover a wide variety of criminal offenses. Moreover, since the Commission is dealing with a comparative scale of seriousness, each proposal will have some bearing uon numerous collateral issues. Therefore, it is to be stressed that the Commission invites public comment not only on the specific changes proposed, but on any aspect of the offense severity table or the guideline ranges themselves that may be of concern to interested members of the public.

These proposed rule changes will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure; Prisoners, Probation and parole.

Accordingly, the following amendments to 28 CFR 2.20, 2.21, and 2.36 are proposed:

1. The authority citation for 28 CFR Part 2 would be revised to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

§ 2.20 [Amended]

2. It is proposed to remove § 2.20(h)(1) and the first sentence of §2.20(h)(2); and, as a conforming amendment, to remove the second sentence of § 2.21(b)(2).

3. The table in § 2.20 following paragraph (j)(2) is revised to read as follows:

GUIDELINES FOR DECISION-MAKING

[Guidelines for decision-making, customary total time to be served before release (including jail time)]

Offense characteristics: Severity of Offense Behavior	Offender characteristics: Parole Prognosis (Salient Factor Score 1981)			
	Very Good	Good	Fair	Poor
	(10–8)	(7–6)	(5–4)	(3–0)
	Months	Months	Months	Months
Category 1: Adult range	<=4	<=8	8–12	12–16
Category 2: Adult range	<=6	<=10	12–16	16–22
Category 3: Adult range	<=10	12–16	18–24	24–32
Category 4: Adult range	12–18	20–26	26–34	34–44
Category 5: Adult range	24–36	36–48	48–60	60–72
Category 6: Adult range	40–52	52–64	64–78	78–100
Category 7: Adult range	52–80	64–92	78–110	100–148
Category 8: [1] Adult range	100+	120+	150+	180+

[1] NOTE.—For Category Eight, no upper limits are specified due to the extreme variability of the cases within this category. For decisions exceeding the lower limit of the applicable guideline category BY MORE THAN 48 MONTHS, the pertinent aggravating case factors considered are to be specified in the reasons given (e.g., that a homicide was premeditated or committed during the course of another felony; or that extreme cruelty or brutality was demonstrated).

4. It is proposed to add a new offense example in Chapter Two, Subchapter B, of the Offense Behavior Severity Index in § 2.20 to read as follows:

213 *Firing a Weapon at a Structure Where Occupants are Physically Present*

Grade according to the underlying offense if one can be established, but not less than Category Five.

5. It is proposed to amend Offense Example 321(b)(2) of Chapter Three, Subchapter C, of the Offense Behavior Severity Index in § 2.20 to include cases in which the victim is tied, bound, or locked up.

6. It is proposed to amend Offense Example 331(f)(1) in Chapter Three, Subchapter D, of the Offense Behavior Severity Index of § 2.20 to include "credit cards or money orders".

7. It is proposed to amend the title of Offense Example 402 in Chapter Four of the Offense Behavior Severity Index of § 2.20 to read as follows:

402 *Transportation of Unlawful Alien(s)*

8. It is proposed to add a new Subchapter D—Voting Fraud in Chapter Six of the Offense Behavior Severity Index of § 2.20 to include the following offense example:

631 *Voting Fraud*

Category Four

9. It is proposed to amend Offense Example 811 in Chapter Eight, Subchapter B, of the Offense Behavior Severity Index in § 2.20 to read as follows:

811 *Possession by Prohibited Person* (e.g., ex-felon)

(a) If single weapon (rifle, shotgun, or handgun), grade as Category Three;

(b) If multiple weapons (rifles, shotguns, or handguns), grade as Category Four.

10. It is proposed to remove Offense Example 901(h) in Chapter Nine, Subchapter A, of the Offense Behavior Severity Idex of § 2.20.

11. It is proposed to amend Offense Example 1141 in Chapter Eleven, Subchapter E, of the Offense Behavior Severity Index of § 2.20 to refer to a person less than 18, rather than 16 years of age in (a), to delete (b), and to reletter (c) as (b).

12. It is proposed to amend Offense 1151 in Chapter Eleven, Subchapter F, in the Offense Behavior Severity Index of § 2.20 to read as follows:

1151 *Bribery Not Involving Federal, State, or Local Governmental Officials*

Grade as if a fraud offense according to (1) the amount of the bribe offered or demanded, or (2) the financial loss to the victim, whichever is higher.

13. It is proposed to amend Offense Example 1151(b) in Chapter Eleven, Subchapter F, of the Offense Behavior Severity Index of § 2.20 to read as follows:

1152 *Sports Bribery*

If the conduct involves bribery in a sporting contest, grade as if a theft offense according to the amount of the bribe, but not less than Category Three.

14. It is proposed to amend the title of Offense 1161 in Chapter Eleven, Subchapter G, of the Offense Behavior Severity Index of § 2.20 to read as follows:

Reports on Monetary Instrument Transactions

15. It is proposed to amend Definition 18 of Chapter Thirteen, Subchapter B in the Offense Behavior Severity Index of § 2.20 to include a person less than 18, rather than 16, years of age.

16. It is proposed to create a separate subchapter concerning the grading of environmental protection offenses (e.g., unlawful disposal of hazardous waste).

17. It is proposed to revise paragraph (a) of § 2.21 Reparole Consideration Guidelines to read as follows:

§ 2.21 Reparole consideration guidelines

(a) If revocation is based upon administrative violation(s) only, grade the behavior as if a Category One offense under § 2.20, recalculate the salient factor score, and apply the guidelines for parole consideration at § 2.20.

* * * * *

§ 2.36 [Amended]

18. It is proposed to amend § 2.36(a)(2)(i)(A) to increase the guideline range from "6–12 months" to 8–16 months."

Dated: May 14, 1985.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 85–13375 Filed 6–7–85; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 7–85–23]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of Florida Department of Transportation and the Venice Area Chamber of Commerce, the Coast Guard is considering changing regulations governing the Venice Avenue and Hatchett Creek (US 41) bridges at Venice by providing for a ten minute closed period between the opening of one bridge and the opening of the other. This proposal is being made because of the proximity of these drawbridges to a major vehicular intersection in downtown Venice. This action should accommodate the needs of

vehicular traffic and yet still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before July 5, 1985.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 S.W. 1st Avenue, Miami, Florida 33130. The comments and other materials referenced in this notice will be available for inspection and copying at 51 S.W. 1st Avenue, Room 816, Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Paskowsky, Bridge Administration Specialist at (305) 350–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walter Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Proposed Regulations

The Venice Avenue and Hatchett Creek drawbridges cross the Gulf Intracoastal Waterway about 600 yards apart in Venice, Florida. The roadways crossing these bridges intersect at right angles in downtown Venice within two blocks of the bridges. Congestion at this busy intersection worsens when one of the drawbridges opens. When the second draw opens before the traffic backup from the first bridge has cleared, this congestion intensifies.

Traffic studies have shown that it takes a maximum of 6 to 7 minutes for traffic to resume normal flow once the Venice Avenue bridge has stopped traffic and begun to open. Timing bridge openings so that neither bridge will open until a traffic backup from the other bridge has had an opportunity to clear should reduce traffic congestion attributable to drawbridge openings.

This proposal would limit routine openings of these two bridges to once every 20 minutes between 7 a.m. and 6 p.m. weekdays. The scheduled openings would be offset by 10 minutes so that either bridge would open 10 minutes after the other if required for vessel passage.

Vessels approaching these bridges from either direction and requiring opening of both spans for passage would be expected to time their arrival at the first bridge to coincide with a scheduled opening time and then transit between the bridges in a 10 minute period.

Existing requirements that the Hatchett Creek bridge open every 15 minutes between 7:30 a.m. and 6 p.m. would be retained on Saturdays, Sundays, and federal holidays. Likewise, the Venice Avenue bridge would be required to open on signal on these days. Reduced vehicular traffic and heavier boating activity make these weekend procedures desirable.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive order 12291 and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the proposal will exempt tugs with tows. Since the economic impact of the proposal is expected to be minimal the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Proposed Regulations

In consideration of the foregoing, it is proposed to amend Part 117 of Title 33, Code of Federal Regulations as follows:

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

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. It is proposed to revise § 117.287 by adding a new paragraph (a–1) and revising paragraph (b) to read as follows:

§ 117.287 Gulf Intracoastal Waterway Caloosahatchee River to Perdido River.

* * * * *

(a–1) The draw of the Venice Avenue bridge, mile 56.6 at Venice, shall open on signal, except that from 7 a.m. to 6 p.m. Monday through Friday except federal holidays the draw need open only at 10 minutes after the hour, 30 minutes after the hour, and 50 minutes after the hour.

(b) The draw of the Hatchett Creek (US 41) bridge, mile 56.9 at Venice, shall open on signal, except that from 7 a.m. to 6 p.m. Monday through Friday except federal holidays the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. On Saturdays, Sundays and federal holidays from 7:30 am to 6 pm the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour.

* * * * *

Dated: May 24, 1985.

A. R. Larzelere,

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

[FR Doc. 85–13925 Filed 6–7–85; 8:45 am]

BILLING CODE 4910–11–M

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33 CFR Part 117

[CGD5–85–02]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, NC

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the North Carolina Department of Transportation, Division of Highways, the Coast Guard is considering amending the regulations that govern the operation of the drawbridge across the AICWW, mile 260.7, at Surf City, North Carolina. The request is for hourly openings for pleasure craft during the boating season. This proposal is being made in an effort to alleviate highway traffic congestion in the vicinity of the drawbridge. Approval of this request would reduce the number of draw openings and probably still provide for the reasonable needs of navigation.

DATE: Comments must be received by July 29, 1985.

ADDRESS: Comments should be mailed to Commander (oan), 5th Coast Guard District, 431 Crawford Street, Portsmouth, Virginia, 23705–5000. The comments received will be available for inspection and copying at the above address, Room 609, between 8 A.M. and 4 P.M., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Wayne J. Creed, Bridge Administrator, Telephone (804) 398-6227.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafter of this notice is W. J. Creed, Project Officer, and Lieutenant Commander W. J. Brudzinski is the Project Attorney.

Discussion of Proposed Rule

The North Carolina Division of Highway made the request to open the bridge on the hour from 7 A.M. to 7 P.M. because of highway traffic congestion in the vicinity of the bridge.

A survey of the marine related businessess in the area indicated that the proposed bridge schedule would not be opposed by these entities. In view of this, it is reasonable to assume that approval of the request is in the public interest.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that the proposed regulation will have no effect on commercial navigation, or on any industries that depend on waterborne transportation. Since the economic impact of this proposal is expected to be so minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

PART 117—DRAWBRIDGE REQUIREMENTS

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

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

Authority: 33 U.S.C. 499; and 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. A new paragraph (c) is added to § 117.821 to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Bogue Sound to Wrightsville Beach.

* * * * *

(c) From May 1 to October 31, the S. R. 50 bridge at Surf City shall open on the hour from 7 A.M. to 7 P.M. for the passage of pleasure craft. To accommodate approaching pleasure craft, the hourly opening may be delayed up to 10 minutes past the hour. Only pleasure boats are affected by this schedule and the standard rules apply to the operation of this bridge.

Dated June 5, 1985.

James C. Irwin,

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

[FR Doc. 85-13922 Filed 6-7-85; 8:45 am]

BILLING CODE 4910-14-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM 85-4]

Registration of Claims to Copyright; Inquiry Concerning Registration and Deposit of Databases

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: As part of another proceeding requesting public comment on the Copyright Office's proposed deposit regulations, the Information Industry Association [I.I.A.] submitted a proposal concerning the deposit requirements for machine-readable databases. The Association of American Publishers [A.A.P.] also suggested a procedure for the group registration of databases. Because of the significance of these issues and their timeliness in light of rapid technological development, by this Notice of Inquiry the Office is inviting public comment on the questions that have been raised.

DATES: Comments should be received on or before July 15, 1985.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Department D.S., Washington, D.C. 20540.

If delivered by hand, copies should be brought to: Office of General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue, SE., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559, (202) 287-8380.

SUPPLEMENTARY INFORMATION: Copyright ordinarily subsists in the contents of a database either as a compilation or as some other work of authorship. In order for a database to have any meaningful copyright protection, however, the author must register the work. Under the Copyright Act of 1976, Title 17 of the United States Code [Act], registration serves several essential functions: It is a prerequisite to suit, 17 U.S.C. 411(a); if the registration is made before publication or within five years of first publication, the certificate or registration is prima facie evidence of the facts it states and of the validity of the copyright, 17 U.S.C. 410(c); and by registering the work within three months after publication, the copyright owner preserves the right to claim statutory damages and discretionary counsel fees. 17 U.S.C. 412.

Section 408(c)(1) of the Act is also important for the deposit of databases. That section authorizes the Register of Copyrights to specify classes into which works may be placed for purposes of deposit and registration. One of the alternatives is "a single registration for a group of related works." When the Copyright Office issued its 1978 regulations, there were several comments requesting special provisions for group registration of revisions and updates of automated databases. 43 FR 763 (January 4, 1978). At that time the Office invited further comments and suggestions as to the type of related works that could be covered by group registration and the deposit and registration requirements applicable in those cases. The possibility of providing for "a single registration for a group of related works," however, was "reserved for implementation in a separate proceeding." 43 FR 965 (January 5, 1978). The Office also deferred additional amendment to the deposit regulations for machine-readable works prior to developing further experience with the "rapidly developing technology of storing and retrieving information." 43 FR 763 (January 4, 1978). Under present

Office regulations, the group registration of related works has similarly been reserved. 37 CFR 202.3(b)(4)(1984).

Databases provide special problems for copyright deposit and examination because they are constantly changing and there remains some question about the copyright ability of additional small increments of information. Special relief provisions, in any event, provide some flexibility in deposit requirements. *See* H.R. Rep. 94–1476, 94th Cong., 2d Sess. 115 (1976). Presently, the specific provision relating to the registration of machine-readable databases is § 202.20(c)(2)(vii)(B), while the special relief provision is § 202.20(d).

Public Comment Invited on the Following Issues

1. A.A.P. Proposal

In response to the proposed deposit regulations published in the **Federal Register** on February 14, 1985 (50 FR 6208), A.A.P. stated that regulations must be developed to meet the problems of deposit for dynamic databases subject to regular revision, expansion or other change. A.A.P. proposed regulations which "permit: (a) A single 'group' registration for varying versions (enhancements, updates, and other modifications) of a database, and related databases, published within a twelve-month period, or any lesser period within twelve months, on the basis of a single deposit and application; (b) in any case, deposit material based on reasonable portions of output, rather than 'raw data' or the like; and (c) diminished deposit requirements in the case of successively or singly ('group') registered revisions, in the nature of descriptions of content and their relation to prior deposits, rather than data content." Letter from Carol A. Risher, Director-Copyright and New Technology, to Dorothy Schrader, General Counsel, Copyright Office (March 29, 1985). The Copyright Office is interested in comments on the feasibility of a single group registration for databases: deposit based on reasonable portions of output, rather than raw data; and deposit based on description of content and its relation to prior deposits, instead of data content.

2. I.I.A. Proposal

I.I.A. suggested in a comment to the proposed deposit regulations (50 FR 6208) that databases cannot serve as documentation of the complete identify of the work's content, either to show the extent of registration or the entirely of the work. Relevant evidence in the examination of authorship, I.I.A. recommended, would be documentary evidence of the continuing process of creation, hard copy extracts (for example, the first and last 25 pages) and the same direct online access as is offered the customer. Finally, I.I.A. stated, section 408(c)(1) of the Act, Title 17 of the United States Code, provides statutory authority for the Copyright Office to permit a single registration for a group of related works (I.I.A. Comment No. 5).

I.I.A. proposed the addition of a new § 202.3(b)(4) which would permit a single registration for a group of related works if certain conditions are met. The group registration would require that works have the same copyright claimant, the same general title, and similar general content, including subject and organization. If the works are published, each must bear a separate copyright notice as first published and have the same copyright owner, and the work or works must be first published within three months prior to registration.

The deposit accompanying the application for the earliest work or works in the group, fixed or published only in the form of machine-readable copies, would be one copy of identifying portions of the work reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. The required deposit for the remaining work or works in the group would be either the above identifying portions taken from the latest work or works in the group or, where registration is sought for a revised version of, or another derivative work based upon a previously registered database, the claimant may deposit identifying material pursuant to 17 U.S.C. 408(c)(1). The identifying material under section 408(c)(1) would consist of a brief statement that it remains representative of the corresponding pages or equivalent units, or of the data file or files and the data records in such file or files. The descriptive statement submitted with the earlier deposit must also remain accurate except for the changes set forth in the current statement. If the earlier deposit and descriptive statement were submitted more than a year earlier, the claimant could not submit identifying material as an alternative deposit for the revised version or versions, and instead would have to meet the general deposit requirements for machine-readable databases.

I.I.A. also advocates the use of special relief, pursuant to the proposed deposit regulation, 37 CFR 202.20(d)(iv), which would allow the Register of Copyrights to "permit the deposit of identifying material which does not comply with § 202.21 of these regulations."

The Copyright Office is interested in public comment on the deposit requirements for machine-readable databases including revisions and derivative works based upon previously registered databases. The Office also welcomes views on the question of the use of the special relief provisions to ease the registration deposit requirements for databases. Although the Office invites public comment specifically on the I.I.A. and A.A.P. proposals, we have not made even a tentative decision that all elements of the proposals have merit.

In this proceeding the Copyright Office is not inviting comment on group registration for works other than databases.

(17 U.S.C. 408, 409 and 702)

List of Subjects in 37 CFR Part 202

Copyright registration.

Dated: May 31, 1985.

Dorothy Schrader,

Associate Register of Copyrights for Legal Affairs.

[FR Doc. 85–13827 Filed 6–7–85; 8:45 am]

BILLING CODE 1410-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Six-Month Extension on the Proposed Rule for Mammillaria Thornberi (Thornber's Fishhook Cactus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of proposed rule and comment period.

SUMMARY: The U.S. Fish and Wildlife Service extends the one-year deadline on the proposed rule (49 FR 17551) for *Mammillaria thornberi* for six additional months as provided for under section 4(b)(6)(B)(i) of the Endangered Species Act of 1973, as amended. Since the proposed rule was published, contractors have provided new information on population numbers and distribution of *Mammillaria thornberi*. The extension period will allow time to gather data for one more field season and to more completely analyze the plant's distribution, population numbers, localities, and potential threats. Comments are solicited.

DATES: With this six-month extension, the new deadline for the final rule will be October 24, 1985. A new comment period will commence with the publication of this notice and will close on July 10, 1985.

ADDRESSES: The complete file for this notice is available for inspection, by appointment, during normal business hours at the Regional Office, U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., Room 4000, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Peggy Olwell, Endangered Species Botanist, Region 2, Office of Endangered Species, 500 Gold Avenue, SW., Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

Mammillaria thornberi (Thornber's fishhook cactus), a member of the cactus family, was proposed for listing as a threatened species in the April 24, 1984, **Federal Register** (49 FR 17551). This species is a narrow endemic and is known only from Pima and Pinal Counties, Arizona. Factors affecting the species, as cited in the proposed rule are collection, habitat destruction from urban development, a proposed Central Arizona Project aqueduct, grazing, and ground water depletion.

In the spring of 1983, a Service contractor conducted a survey of various areas proposed for construction of portions of the Central Arizona Project and a proposed mitigation area (Reichenbacker, 1984). This study, and other studies conducted in 1984 (Steve Boyd, Tierra Madre Consultants, Riverside, California, pers. comm., 1984), expanded the known occurrence of thornber's fishhook cactus and greatly increased known population levels. In light of this information, there is now substantial disagreement among those most familiar with the species' status as to whether it qualifies for listing under the Endangered Species Act and, therefore, more time is needed to analyze the available data regarding potential threats to the species. Therefore, the Service under section 4(b)(6)(B)(i) extends for six months the one-year deadline on the Thornber's fishhook cactus. Future actions on the proposed listing of this species depend on the results of this analysis. After a thorough analysis of the data, the Service will decide either to continue with the final listing of the species or to withdraw the proposal for *Mammillaria thornberi* as provided under section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended.

Literature Cited

Reichenbacher, F.W. 1984. Rare plants of the Central Arizona Project Tucson Aqueduct Phase B. U.S. Fish and Wildlife Service, Endangered Species Office, Albuquerque, New Mexico. 61 pp.

Author

The primary author of this notice is Heather A. Stout, Endangered Species Botanist, Region 2 (See **ADDRESSES** above) (505/766-3972 or FTS 474-3972).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; 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)

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: June 3, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-13824 Filed 6-7-85; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Document No. 50587-5087]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement conservation and management measures as prescribed in the proposed Amendment 1 (Amendment) to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP). This rule provides for measures designed (1) to maintain more effectively the landings and productivity of each user group to the maximum extent possible; (2) to restore overfished stocks; and (3) to prevent overfishing of king and Spanish mackerel, and cobia. The intended effect is to rebuild and maintain all stocks at a maximum sustainable yield (MSY) level.

DATES: Written comments on the proposed rule must be received on or before July 20, 1985.

ADDRESSES: Comments on the proposed rule, the Amendment, or supporting documents should be sent to Mr. Jack Brawner, Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida, 33702. Mark the outside of the envelope "Comments on Gulf and South Atlantic Mackerel Plan—Amendment 1." Copies of the Amendment, the supplemental environmental impact statement and the supplemental regulatory impact review/initial regulatory flexibility analysis are available from Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida, 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) approved the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP) on April 1, 1982, and the Secretary of Commerce (Secretary) implemented final regulations on February 4, 1983 (48 FR 5272), under the authority of the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act). The proposed rule implements the amendment to the FMP which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils).

The FMP manages the coastal migratory pelagic fishery throughout the fishery conservation zone (FCZ) off the South Atlantic coastal states from the Virginia-North Carolina border south and through the Gulf of Mexico to the Texas-Mexico border. The proposed rule applies only to this area. The management unit for the FMP consists of Spanish mackerel, king mackerel, and cobia. Dolphin, bluefish (Gulf of Mexico only), little tunny and cero mackerel are minor species in the fishery, and data collection requirements of the FMP apply only to these seven species.

Background

Recent scientific data and analyses indicate that the king mackerel stock consists of, at least, two migratory groups which, for management purposes, should be treated as separate stocks, i.e., an Atlantic migratory group and a Gulf migratory group. Tagging data indicate that in U.S. waters the Gulf migratory group occupies a range from the Texas-Mexico border to the Florida

Keys during the period from April to November and from the Texas-Mexico boundary to the Volusia-Flagler County, Florida boundary from November to April. Conversely, the Atlantic migratory group occupies a range from North Carolina through the Florida Keys during the period April to November and from North Carolina to the Volusia-Flagler boundary from November to April (see Figure 2). The Gulf migratory group is currently being overharvested, whereas the Atlantic migratory group is currently underharvested. The best estimate of MSY for the king mackerel stock is 26.2 million pounds.

This amendment provides for the fishery a flexible management system which can rapidly adapt to changes in resource abundance, changes in fishing patterns among user groups or by area, and new scientific information. This management system provides for a scientific stock assessment group which will reassess the condition of each stock, stock identity, stock distribution, and MSY, and prepare a range of acceptable biological catch (ABC) for each stock or migratory group from which the Councils will recommend adjustments to the total allowable catch (TAC). The Councils will review the stock assessment information and management alternatives and, after obtaining comment from their advisory panels (APs) and the public, may recommend management measures to the NMFS Director, Southeast Region (Regional Director). If the Regional Director determines that the recommendations are consistent with the national standards, the FMP's goals and objectives, and applicable law, the Secretary of Commerce (Secretary) may implement them by notice in the **Federal Register**.

Optimum Yield (OY)

The Councils established MSY as the long-term goal of OY for the mackerel fisheries. The amount of OY which may be harvested annually for each species, specified as TAC, may vary due to fluctuating recruitment; fluctuating abundance by area or unit of stock; intensity of fishing effort by area or unit of stock; social, economic, or ecological factors; and improving estimates of MSY. The TAC level selected for the Gulf migratory group of king mackerel would allow recovery of the group to a MSY level within approximately three years.

Allocation by User Group

Allocations by user group are specified for the Gulf migratory group of king mackerel and for the Atlantic migratory group of king mackerel for recreational fishermen and for commercial fishermen.

Initially, 68 percent of the TAC for the Gulf migratory group of king mackerel is allocated to recreational fishermen and 32 percent to commercial fishermen. With TAC specified as 14.225 million pounds, the allocations are 9.673 million pounds for recreational fishermen and 4.552 million pounds for commercial fishermen. The commercial allocation is further separated into eastern and western quotas to provide for more equitable access to the resource by all users.

Initially, 62.9 percent of the TAC for the Atlantic migratory group of king mackerel is allocated to recreational fishermen and 37.1 percent to commercial fishermen. With TAC specified as 11.812 million pounds, the allocations are 7.430 million pounds for recreational fishermen and 4.382 million pounds for commercial fishermen.

The percentage ratio for future allocations between recreational and commercial fishermen fishing each migratory group will be based on the ratio of the average catch of each user group over the most number of years beginning in 1979 for which concurrent recreational and commercial catch data are available, and, therefore, may vary annually. Following the computation of the allocation ratio, two percent (2%) will be transferred from recreational to commercial allocation for the Gulf migratory group to provide for sale by recreational fishermen provided the transfer does not alter the bag limit.

The starting dates for the fishing years specified for allocations of the Gulf and Atlantic migratory groups of king mackerel are adjusted to provide for equal access for all users.

Commercial Quotas

The allocations of TAC for commercial fishermen harvesting king mackerel are specified as harvest quotas. The quotas serve to prevent harvest from exceeding TAC. To provide for equitable access, the quota for the Gulf migratory group is specified as sub-quotas for eastern and western allocation zones (see Figure 2). The quotas may vary annually as a function of TAC and the FMP procedures for setting allocations. When the quotas for either of these Gulf Migratory groups has been reached, fishing under that quota will be prohibited and sale of king mackerel from that migratory group and/or allocation zone will be prohibited. Qoutas are reached when the poundage of fish landed and sold equals the specified quota.

As TAC and the quota for the Gulf migratory group change, the quota will be allocated between commercial user groups as follows: Six percent (6%) not to exceed 400,000 pounds will be reserved for purse seines. Of the remainder, 69 percent will be allocated to the eastern allocation zone and 31 percent to the western allocation zone.

Purse seine harvest of king mackerel is counted in the commercial allocations and is limited by quotas, which are reached when the reported landing by purse seines equals the quotas.

Bag Limits

The allocations of TAC for recreational fishermen harvesting king mackerel are specified as bag limits on a per-person, pre-trip basis, and serve to prevent annual harvest from exceeding TAC. The bag limits may vary annually as a function of the TAC. Under the amendment, separate bag limits may be specified for persons fishing from private vessels and from charter vessels.

Bag limits for recreational fishermen harvesting king mackerel from the Gulf migratory group are established at two fish per person per trip, including all persons aboard private vessels. For persons fishing form charter vessels the bag limit is established at three fish per person per trip, excluding the vessel's captain and crew, or two fish per person per trip, including the vessel's captain and crew.

A bag limit is not established for recreational fishermen harvesting the Atlantic migratory group of king mackerel. However, a bag limit may be specified in the future through the assessment procedure if harvest levels reach TAC.

Statistical Reporting

The statistical reporting requirements of the FMP which were reserved in promulgation of the final rule (48 FR 5272) are included in this proposed rule. The data collection system proposed in these regulations makes mandatory certain voluntary commercial reporting programs administered by NMFS, whereby data on harvest are collected by port agents both from dealers and through interviews from fishermen and establishes mandatory systems for collection of recreational data when necessary.

Interviews may be conducted under a mandatory system for selected recreational vessel operators catching migratory coastal pelagic fish when more exacting data (such as on method of fishing, catch by species, area fished and expenditures incurred) than presently collected under the NMFS Marine Recreational Fishing Statistics Survey are required. This system will be

developed for implementation when specific data requirements are identified. The Center will begin determining the exact data needed and and the best system to gather the data after this rule becomes effective. Sections relating to collection of information will not be effective until after approval by the Office of Management and Budget.

The reporting of statistical information under the current voluntary systems, which included commercial dealers, processors, and vessel owners is inadequate for management of the fishery for the following reasons. First, these voluntary data are not adequate for management on a species approach. Second, the FMP reporting provision calls for collection under mandatory systems, and equity considerations require that mandatory systems apply to all user groups. Stock assessment procedures for the various species require collection of additional data and more precise data than are available through existing systems. Certain species in the fishery are being overfished, and the additional and more precise data are required to assess the degree of overfishing and to formulate measures to restore these stocks. Additionally, certain user groups are not adequately covered under existing systems. Charter vessels, for example, are poorly sampled.

Effective management of the fishery requires comprehensive and uniform data collection. Stock assessments, maximum sustainable yield calculations and optimum yield determinations must be based on information gathered from state waters as well as the fishery conservation zone (FCZ). None of the States is consistently collecting catch information from recreational anglers or from charter vessels and headboats, although some States have infrequently collected these data in the past. Only the State of Florida is collecting catch information from commercial fishermen and these data do not include all the data elements considered necessary for management by the Councils. All of the States collect some information on total landings from dealers and processors, but these data elements differ from State to State and generally are not complete enough to allow for proper management of each species throughout their range. Without this information the Councils' ability to manage the resource throughout the Gulf would be unacceptably limited.

Information collected under the mandatory system is to be used for management of the fishery, and will be released only in aggragate or summary form which does not disclose the identity of the submitter. The Regional Director has reviewed the proposed regulations and has determined that this information is necessary for management of the coastal migratory pelagic fishery.

Classification

Section 304(a)(1)(C)(ii) of the Magnuson Act, as amended by Pub. L. 97–453, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 30 days of receipt of the Amendment to the FMP and regulations. At this time the Secretary has not determined that the Amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Councils prepared a draft supplemental environmental impact statement for this Amendment; a notice of availability was published on June 29, 1984 (49 FR 26809).

The Administrator, NOAA, has determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under Executive Order 12291. The Amendment's management measures are designed to maintain the productivity of each user group to the maximum extent possible, by restoring overfished stocks and preventing overfishing of the king and Spanish mackerel and cobia stocks. The major benefits from this Amendment are greater than the associated Federal costs to manage the fishery on a continuing basis. The Council prepared a supplemental regulatory impact review (SRIR) which concludes that this proposed rule will have the following economic effects. Greater benefits will result in terms of overall poundage produced than the other alternatives. The no action alternative would have resulted in a 32 percent decline in long-term abundance, if fishing pressure remained unchanged. The proposed regulations should restore the king mackerel stock to within five to ten percent of MSY in three years. The proposed regulations are expected to reduce commercial landings value by $101,200 initially or by $337 per vessel over the average of the last five years. No price increases should develop as a result of the regulations.

Recreational catch levels would be initially reduced by about 22 percent or 2.26 million pounds for private vessels and 840,000 for charter vessels. The impact on catch reduction is greater for charter vessels, i.e. 34 percent reduction in king mackerel catch and 11 percent of all fish catch. The impact on reduction in number of charter vessel customers cannot be estimated.

Federal and State enforcement costs of the regulatory actions are estimated at $40,000 if States adopt compatible regulations and at $64,000 if they do not. A copy of the SRIR may be obtained at the **ADDRESS** above.

This proposed rule is exempt from the procedure of Executive Order 12291 under Section 8(a)(2) of that order. Deadlines imposed under Section 304 of the Magnuson Act, as amended by Public Law 97–453, require the Secretary to publish this proposed rule 30 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow procedures of the order.

The Council prepared an initial regulatory flexibility analysis as part of the SRIR which concludes that this proposed rule will have an insignificant effect on commercial fishing entities and potentially a significant impact on charter vessel entities, dependent on customer reaction to the bag limits. These effects are included in the SRIR which is summarized above. A copy of this analysis may be obtained from the Regional Director at the **ADDRESS** listed above.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). The voluntary collection of this information has been previously approved by the Office of Management and Budget (OMB control numbers 0648–0013 and 0648–0052). A request to collect this information under a mandatory requirement has been submitted to the Office of Management and Budget for review under section 3504(h) of the PRA. When mandatory reporting by selected recreational fishermen is required, an additional request will be submitted to OMB.

The Councils have determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of the states of North Carolina, South Carolina, Florida, Alabama, Mississippi, and Louisiana. These determinations have been submitted for review by the responsible State agencies under Section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting requirements.

Dated: June 5, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

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

2. In Part 642, the Table of Contents is amended by revising the headings for § 642.5 from "Recordkeeping and reporting requirements [Reserved]" to read "Reporting requirements", and for § 642.6 from "Vessel identification [Reserved]" to "Vessel identification" and by adding under Subpart B three new section designations to read as follows:

Subpart B—Management Measures

* * * * *

Sec.
642.27 Stock assessment procedures.
642.28 Bag and possession limits.
642.29 Area and time separation.

3. Section 642.2 is amended by adding the words "or designee" to the end of the definition for Center Director, by changing the phrase "U.S. harvested fish" to "U.S.-harvested fish" in the definition and throughout Part 642, and adding in alphabetical order the new definition "Acceptable biological catch", "Allocation", "Charter Vessel", "Migratory group", "Species", "Statistical area", "Total allowable catch", "Total length", and "Trip", to read as follows:

§ 642.2 Definitions.

* * * * *

Acceptable biological catch (ABC) means a range of harvest levels computed from stock assessment parameters that sets forth the levels of harvest which can be taken from a stock or migratory group while maintaining the stock at or near maximum sustainable yield. ABC may vary due to fluctuating recruitment, fluctuating abundance, and intensity of fishing effort.

Allocation means that portion or percentage of the total allowable catch of a stock or migratory group of fish which is allocated to a specific user group for harvest during a fishing year. Harvest levels may be limited to an allocation by specifying harvest quotas or by specifying nonquota restrictions such as bag limits, etc.

* * * * *

Charter vessel (includes headboats) means a boat or vessel whose captain or operator is licensed by the U.S. Coast Guard to carry paying passengers and whose passengers fish for a fee.

Charter vessel crew means those individuals, including the licensed vessel captain, who receive monetary or other compensation from the vessel owner or from the passengers who are engaged in fishing from the vessel as anglers.

* * * * *

Migratory group means a group of fish that may or may not be a separate genetic stock but which for management purposes may be treated as a separate stock. (See Figure 2 and § 642.29 for geographical and seasonal boundaries between migratory groups of king mackerel.)

* * * * *

Species refers to the Specific Scientific Name for each fish identified under the definition of *coastal migratory pelagic fish.*

Statistical area means one or more of the statistical grids depicted in Figure 3.

Total allowable catch (TAC) means the maximum permissible level of annual harvest specified for a stock or migratory group after consideration of the biological, economic, and social factors with such level being specified from within the range of acceptable biological catch.

Total length means the distance from the tip of the head to the tip of the tail (caudal fin) while the fish is lying on its side normally extended.

Trip means a fishing trip regardless of number of days duration which begins with departure from a dock, berth, beach, seawall or ramp and which terminates with return to a dock, berth, beach, seawall or ramp.

* * * * *

4. Section 642.4 is revised in its entirety to read as follows:

§ 642.4 Permits and fees.

(a) *Applicability.* Owners or operators of fishing vessels which fish for Gulf migratory group king mackerel under the commercial quotas are required to obtain an annual vessel permit. Owners or operators of charter vessels and headboats are excluded from eligibility for a vessel permit.

(b) *Application for permits.* An application for a permit must be submitted and signed by the owner or operator of the vessel. The application must be submitted to the Regional Director or his designee within 60 days prior to July 1 of each year. Owners or operators of newly registered or documented vessels may submit an application at any time during a fishing year provided it is received by the Regional Director within 60 days after registration or documentation. In cases of demonstrated hardship the Regional Director may accept applications at other times. Permit applicants must provide the following information:

(1) Name, mailing address including zip code, and telephone number of the owner and the operator of the vessel;

(2) Name of vessel;

(3) The vessel's official number;

(4) Home port or principal port of landing, gross tonnage, radio call sign and length of vessel;

(5) Approximate fish hold capacity of the vessel;

(6) A sworn statement by owner or operator certifying that at least ten percent of his or her earned income was derived from commercial fishing during at least one of the three preceding calendar years (January 1 through December 31), and that the vessel for which the permit is intended will not be operated as a charter vessel in an area in which the Gulf migratory group of king mackerel are occurring; and

(7) Any other information concerning vessel, gear characteristics and fishing are requested by the Regional Director.

(c) *Proof of certification.* The Regional Director or his designee may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(6) before a permit is issued or to substantiate why such a permit should not be revoked under paragraph (i).

(d) *Issuance.* The Regional Director or his designee will issue a permit to the applicant only during May and June of each year. The Regional Director will issue permits to newly registered or documented vessels, or cases of demonstrated hardship at other times, as found at paragraph (b) of this section. Until the permit is received, fishermen must comply with the bag limit under § 642.28.

(e) *Fees.* A fee may be assessed for any permit issued under this section. The cost of the permit, if any, will be posted on the application form and will be limited to the administrative cost of issuing the permit which may not exceed $10.00.

(f) *Duration.* A permit is valid only for the duration of the year for which it is issued (July 1–June 30) unless revoked or suspended under to 15 CFR Part 904.

(g) *Transfer.* A permit issued under this section is not transferable or assignable, except on sale of the vessel to a new owner. A permit is valid only for the fishing vessel for which it is issued. New owners purchasing a permitted vessel to fish under the Gulf migratory group quota must comply with the provisions of paragraph (b) of this section. The application must be accompanied by an executed (signed) bill of sale. New owners who have purchased a permitted vessel may fish with the preceding owner's permit until a new permit has been issued, but for a period not to exceed 60 days.

(h) *Display.* A permit issued under this section must be carried aboard the fishing vessel, and the vessel must be identified as provided for in § 642.6. The operator of a fishing vessel must present the permit for inspection upon request of any authorized officer.

(i) *Sanctions.* Subpart D of 15 CFR Part 904 governs the imposition of sanctions against a permit issued under this section.

(Approved by the Office of Management and Budget under Control Number 0648–0097)

5. A new § 642.5 is added to read as follows:

§ 642.5 Reporting requirements.

(a) *Commercial vessel owners and operators.* Any person (1) who owns or operates a fishing vessel that fishes for or lands coastal migratory pelagic fish for sale, trade, or barter, or that fish under a permit required in § 642.4, in the Gulf of Mexico FCZ or South Atlantic FCZ or in adjoining State waters, and (2) who is selected to report must provide upon request the following information regarding any fishing trip to the Center Director or his designee:

(1) Name or official number of vessel;

(2) Poundage of catch of any coastal migratory pelagic fish as defined by species;

(3) Depth fished and information regarding fishing location that is specific enough to enable the Center Director or his designee to ascertain the statistical area fished (see Figure 3);

(4) Amount and person to whom sold, bartered, or traded;

(5) Number, size and type of gear; and

(6) Period (hours or days) of fishing.

(b) *Charter vessel owners and operators.* Any person (1) who owns or operates a charter vessel that fishes for or lands coastal migratory pelagic fish in the Gulf of Mexico FCZ or South Atlantic FCZ or adjoining State waters, and (2) who is selected to report must maintain a daily fishing record on forms provided by the Center Director. These forms must be submitted to the Center Director weekly. Information to be included in the forms must include:

(1) Name or official number of vessel;

(2) Operator's Coast Guard license number;

(3) Date of trip;

(4) Number of fishermen on trip;

(5) Area fished;

(6) Fishing methods and type of gear;

(7) Hours fished;

(8) Species targeted; and

(9) Number and estimated weight of fish caught by species.

(c) *Dealers and processors.* Any person (1) who receives coastal migratory pelagic fish or parts thereof by way of purchase, barter, trade, or sale from a fishing vessel or person that fishes for, or lands said fish, or parts thereof in the Gulf of Mexico FCZ or South Atlantic FCZ or in adjoining State waters, and (2) who is selected to report, must provide upon request the following information to the Center Director or his designee at monthly intervals, or more frequently if requested, and on forms provided by the Center Director:

(1) Dealers or processors name and address;

(2) County where fish were landed;

(3) Total poundage of each species received during that month, or other requested interval;

(4) Average monthly price paid for each species; and

(5) Proportion of total poundage landed by each gear type.

(d) *Recreational fishing vessels.* Any person (1) who owns or operates any recreational fishing vessel that fishes for or lands any coastal migratory pelagic fish managed by the FMP in the Gulf of Mexico FCZ or South Atlantic FCZ or adjoining State waters, and (2) who is selected to report, must provide the following information to the Center Director or his designee:

(1) Name;

(2) Boat number or identification;

(3) Date of trip;

(4) Number of fishermen on trip;

(5) Species targeted;

(6) Number of fish caught by species;

(7) Area fished;

(8) Hours fished; and

(9) Fishing methods and gear.

(e) Any owner or operator of commercial, charter, or recreational vessels, and dealers or processors may be required upon request to make such fish or parts thereof available for inspection by the Center Director or his designee for the collection of additional information or for inspection by any authorized enforcement officer.

6. A new § 642.6 is added to read as follows:

§ 642.6 Vessel identification.

(a) *Official number.* Each vessel of the United States engaged in commercial fishing for Gulf migratory group king mackerel under a quota and the permit specified in § 642.4 must

(1) Display its official number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The official number is the documentation number issued by the Coast Guard for documented vessels or the registration number issued by a State or the Coast Guard for undocumented vessels.

(2) The official number must be in block arabic numerals in contrasting color to the background.

(3) The official number must be at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels.

(4) The official number must be permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of each fishing vessel must

(1) Keep the official number clearly legible and in good repair, and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number from any enforcement vessel or aircraft.

7. Section 642.7 is amended by revising the introductory text and designating it as paragraph (a), redesignating paragraphs (a) through (m) as (1) through (13), revising paragraph (6), removing old paragraph (13), adding new paragraph (13) through (27), and adding a new paragraph (b) to read as follows:

§ 642.7 Prohibitions.

(a) It is unlawful for any person to do any of the following:

* * * * *

(6) Fish for king and Spanish mackerel using a purse seine, except in compliance with § 642.24(b) and (c);

* * * * *

(13) Have in possession aboard in the FCZ Gulf group king mackerel or consume at sea, land, sell, offer to sell or possess Gulf migratory group king mackerel harvested in the FCZ in excess of the bag limit specified in § 642.28(a);

(14) Fail to transfer or to display a permit as provided for in § 642.4 (g) and (h);

(15) Falsify or fail to report information required to be submitted by § 642.5;

(16) Fail to make fish available for inspection as required by § 642.5(e);

(17) Fail to display the official vessel identification number or comply with other provisions for vessel identification as specified in § 642.6;

(18) Purchase, sell, barter, trade, or accept in trade, king mackerel, harvested in the FCZ from a specific migratory group of specific allocation zone or by purse seine gear, for the remainder of that fishing year specified in § 642.20, after the quota for that migratory group or allocation zone, or purse seine gear as specified in § 642.21(a) or (b) has been reached and closure as specified in § 642.22 has been invoked (Table 2). (This prohibition does not apply to trade in king mackerel harvested, landed and bartered, traded or sold prior to the closure and held in cold storage by dealers and processors);

(19) Fish for, retain, or have in possession in the FCZ aboard a vessel permitted under § 642.4 king mackerel from a migratory group or allocation zoned after the quota for that migratory group or allocation zone specified in § 642.21(a) has been reached and closure has been invoked as specified in § 642.22 (Table 2);

(20) Fish for king or Spanish mackerel in the FCZ with purse seines after the quotas specified in § 642.21(b) and (d) have been reached and closure has been invoked as specified in § 642.22 (Table 2);

(21) Fish for or have in possession on board Spainsh mackerel in or from the FCZ or purchase, sell, barter, trade or accept in trade, Spanish mackerel after the total allowable catch specified in § 642.21(c) is reached and closure has been invoked as specified in § 642.22 (Table 2);

(22) Land, consume at sea, sell, or have in possession at sea or time of landing, Gulf migratory group king mackerel harvested from the FCZ in excess of the bag limits specified in § 642.28, except as provided for under § 642.4 and § 642.21;

(23) Fish for king mackerel from the Gulf migratory group in the FCZ as defined in § 642.29 under the quotas specified in § 642.21(a) without a permit as specified in § 642.4;

(24) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process of enforcing this part;

(25) Interfere with, obstruct, delay, or prevent in any manner the seizure of illegally taken coastal migratory pelagic fish or the final disposition of such coastal migratory pelagic fish through the sale of the coastal migratory pelagic fish;

(26) Land king mackerel from the Gulf migratory group in other than an identifiable form as specified in § 642.26(b); or

(27) Land Spanish mackerel and cobia without the head and fins intact as required by § 642.23(c).

(b) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

* * * * *

8. Section 642.20 is revised in its entirety to read as follows:

§ 642.20 Seasons.

The fishing year for the Gulf migratory group of king mackerel for the commercial quota including purse seines begins at 0001 hours July 1 and ends at 2400 hours on June 30, local time (see Figure 2). The fishing year for the Atlantic migratory group of king mackerel begins at 0001 hours on April 1 and ends at 2400 hours on March 31, local time. The purse seine quotas for King Mackerel begin a 0001 hours on July 1 and end at 2400 hours on June 30, local time. The fishing year for all other coastal migratory pelagic fish begins at 0001 hours on January 1 and ends at 2400 hours on December 31, local time (Table 1).

9. Section 642.21 is revised in its entirety to read as follows:

§ 642.21 Quotas.

(a) *Commercial quotas for king mackerel.* The initial commercial allocation for the Gulf migratory group of king mackerel is 4.552 million pounds per fishing year. This allocation is divided into quotas as follows: (1) 2.940 million pounds for the eastern allocation zone; (2) 1.328 million pounds for the western allocation zone; and (3) 0.284 million pounds for purse seines (see Figure 2 and paragraph (e) of this section for description of allocation zones). The commercial allocation for the Atlantic migratory group of king mackerel is 4.382 million pounds per fishing year. A fish is counted against the commercial quota or allocation when it is first sold (Table 2).

(b) *Purse seine quota for king mackerel.* The harvest of king mackerel by purse seines from the Gulf migratory group is limited to 284,000 pounds each fishing year. The harvest of king mackerel by purse seines form the Atlantic Ocean is limited to 400,000 pounds each fishing year. King mackerel harvested by purse seines are counted in the commercial allocations and quotas specified in paragraph (a) of this section (Table 2).

(c) *Spanish mackerel.* The TAC of Spanish mackerel is 27 million pounds per fishing year in aggregate for all user groups (Table 2).

(d) *Purse seine quota for Spanish mackerel.* The harvest of Spanish mackerel by purse seines is limited to 300,000 pounds in the Gulf of Mexico and to 300,000 pounds in the Atlantic Ocean per fishing year. Spanish mackerel harvested by purse seines are included in the TAC specified in paragraph (c) of this section (Table 2).

(e) *Geographic boundaries and allocation zones.* The boundary between the Gulf of Mexico and the Atlantic Ocean begins at the intersection of the outer boundary of the FCZ and 83° W. longitude, proceeds north to 24°35' N. latitude (Dry Tortugas), east to Marquesas Key, then through the Florida Keys to the mainland. The boundary between eastern and western zones established for commercial allocation of the Gulf migratory group of king mackerel is a line beginning at the boundary between the states of Alabama and Florida (30°16'53" N. latitude and 87°31'06" W. longitude) and running directly south ot its intersection with the outer limit of the FCZ (Figure 2).

10. Section 642.22 is revised in its entirety to read as follows:

§ 642.22 Closures.

The Secretary, by publication of a notice in the **Federal Register**, will close the king or Spanish mackerel fishery to fishing in the FCZ for a particular gear type, allocation zone, or user group when the quota for that gear type, allocation zone, or user group under § 642.21 has been reached or is projected to be reached (Table 2). The notice of closure for quotas specified under § 642.21 will also provide notice that the purchase, barter, trade, and sale of king or Spanish mackerel taken from the FCZ after the closure for the migratory group of allocation zone affected is prohibited for the remainder of that fishing year. This prohibition does not apply to trade in Spanish or king mackerel harvested, landed, and bartered, traded or sold prior to the closure and held in cold storage by dealers or processors.

11. In § 642.23, paragraphs (a)(1) and (b) are revised and a new paragraph (c) is added to read as follows:

§ 642.23 Size restrictions.

(a) *Spanish mackerel—(1) Minimum size.* The minimum size for the possession of Spanish mackerel in or taken from the FCZ is 12 inches (fork

length) or 14 inches (total length) for both recreational or commercial fisheries, except for the incidental catch allowance under paragraph (a)(2) of this section.

* * * * *

(b) *Cobia.* The minimum size limit for the possession of cobia in or taken from the FCZ in 33 inches (fork length) or 37 inches (total length).

(c) All Spanish mackerel and cobia must be landed with the head and fins intact.

12. In § 642.24, paragraph (b)(1)(i) is revised and a new paragraph (c) is added to read as follows:

§ 642.24 Vessel, gear and equipment limitations.

* * * * *

(b)(1)* * *

(i) at least 30 days in advance of the beginning of the fishing year, or

* * * * *

(c) *Purse seine catch allowance and exclusions.* A vessel with a purse seine aboard will not be considered as fishing for king or Spanish mackerel for the purposes of paragraph (b) of this section and will not be considered in violation of a purse seine closure affected in accordance with § 642.22 provided the catch of king mackerel or Spanish mackerel does not exceed one and ten percent, respectively, by weight or number (whichever is less) of the catch of all fish aboard the vessel. Such king and Spanish mackerel must be reported in accordance with paragraph (b)(3) of this section and will be counted in the quotas provided for under § 642.21 and subject to the prohibition on sale provided for under § 642.22.

13. A new § 642.27 is added to read as follows:

§ 642.27 Stock assessment procedures.

(a) The Councils will appoint an assessment group (Group) that will assess the condition of each stock of king and Spanish mackerel in the management unit on an annual basis. The Group will present a report of its assessment and recommendations to the Councils.

(b) The Councils will consider the report and recommendations of the Group and hold public hearings at a time and place of the Council's choosing to discuss the Group's report. The Councils will convene a joint Advisory Panel and may convene the Scientific and Statistical Committee to provide advice prior to taking final action. After receiving public input, Councils will make findings on the need for changes.

(c) If changes are needed in MSYs, TACs, bag limits, quotas, or permit, the Councils will advise the Regional Director in writing of their recommendations, accompanied by the Group's report, relevant background material, draft regulations, and public comment. This report will be submitted each year by such date as agreed upon by the Councils.

(d) The Regional Director will review the Councils' recommendations, supporting rationale, draft regulations, public comments and other relevant information. If he concurs with the recommendation, he will forward the draft regulations to the Secretary for approval. In the event the Regional Director rejects the recommendations, existing regulations will remain in effect until the issue is resolved.

(e) If the Regional Director concurs that the Councils' recommendations are consistent with the goals and objectives of the plan, the national standards, and other applicable law, the Secretary may implement the regulations by notice in the **Federal Register** each year prior to the appropriate fishing year or such dates as agreed upon with the Councils. A 15-day period for public comment will be afforded.

(f) Appropriate regulatory changes which may be implemented by the Secretary by notice in the **Federal Register** include

(1) Adjustment of the point estimates of MSY for mackerel within the following ranges:

(i) King mackerel—21.9 million pounds to 35.2 million pounds.

(ii) Spanish mackerel—13.5 million pounds to 49.1 million pounds.

(2) Setting TACs for each stock or group of fish which should be managed separately, as identified in the FMP. The TAC may be increased, not to exceed 30 percent annually when warranted by new information. Any number of increases may be made so long as they do not exceed 30 percent in any one year and provided that no TAC will exceed the best point estimate of MSY by more than ten percent. Downward adjustments of any percentage are allowed in order to protect the stock and prevent overfishing. Reductions or increases in allocations as a result of changes in the TAC are to be equitable as may be practicable utilizing similar percentage changes to all participants in a fishery. (Changes in bag limit cannot always accommodate the exact desired level of change.)

(3) Adjusting user group allocations in response to changes in TACs according to the formulas specified in the FMP.

(4) Implementing or modifying quotas, bag limits, or permits as necessary to limit the catch of each user group to its allocation.

14. A new § 642.28 is added to read as follows:

§ 642.28 Bag and possession limits.

(a) *Recreational allocation bag limit.* Persons who fish for king mackerel from the Gulf migratory group (see Figure 2) in the FCZ (except those fishing under the permit and quotas specified in § 642.4, § 642.21 and § 642.24(c)) are limited to the following:

(1) Possessing three (3) king mackerel per person per trip, excluding the vessel crew or possessing two (2) king mackerel per person per trip, including the vessel crew, whichever is the greater, when fishing from a charter vessel.

(2) Possessing two (2) king mackerel per person per trip when fishing from other vessels;

(b) All king mackerel from the Gulf migratory group must be landed in an identifiable form as to number and species (with the understanding that head tail can be removed).

(c) After a closure under § 642.22 is invoked for a migratory group or allocation zone specified in § 642.21 vessels permitted under § 642.4 may not fish for Gulf migratory king mackerel under the bag limit specified under paragraph (a) of this section nor can persons fishing under the bag limit sell their fish.

15. A new § 642.29 is added to read as follows:

§ 642.29 Area and time separation.

(a) *Summer separation.* During the summer period (April 1 through October 31) the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending directly west from the Monroe/Collier County, Florida boundary (25°48′ N. latitude) to the outer limit of the FCZ (Figure 2).

(b) *Winter separation.* During the winter period (November 1 through March 31) the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending directly east from the Volusia/Flagler County, Florida boundary (29°25′ N. latitude) to the outer limit of the FCZ (Figure 2).

TABLE 1.—FISHING SEASONS FOR COASTAL MIGRATORY PELAGIC FISH IN THE FCZ

Type	Begins—	Ends—
King mackerel		
Gulf migratory group	0001 hours July 1.	2400 hours June 30.
Atlantic migratory group	0001 hours Apr. 1.	2400 hours Mar. 30.
Purse seine quotas	0001 hours July 1.	2400 hours June 30.
Other fish and fishing		
All Other Fishing	0001 hours Jan. 1.	2400 hours Dec. 30.

TABLE 2.—KING AND SPANISH MACKEREL QUOTAS AND TOTAL ALLOWABLE CATCH (TAC) FOR WHICH CLOSURES ARE INVOKED FOR SPECIFIC MIGRATORY GROUPS OR ALLOCATION ZONES OR GEAR TYPES [1]

Migratory group(s)	Fishing year	Gear	Allocation zone	Initial year quota/ TAC (million pounds)	Prohibition on sale and/or catch invoked when—
King mackerel:					
Atlantic	1 Apr.–31 Mar.	All types	Entire range [2]	4.382	Sales from migratory group are projected to reach quota.
Gulf	1 July–30 June	All types	Entire range [2]	4.552	Sales from migratory group are projected to reach quota.
Gulf	1 July–30 June	All types	Western zone [3]	1.328	Sales from allocation zone are projected to reach quota.
Gulf	1 July–30 June	All types	Eastern zone [3]	2.940	Sales from allocation zone are projected to reach quota.
Gulf	1 July–30 June	P.S. [5]	Entire range [2]	0.284	Landings from migratory group are projected to reach quota.
G.A. [6]	1 July–30 June	P.S. [5]	Atlantic Ocean [4]	0.400	Landings from migratory group are projected to reach quota.
Spanish mackerel	1 Jan.–31 Dec.	All types	G.A. [6]	27.000	When landings are projected to reach TAC.
	1 Jan.–31 Dec.	P.S. [5]	Atlantic Ocean	0.300	When landings are projected to reach quota.
	1 Jan.–31 Dec.	P.S. [5]	Gulf of Mexico	0.300	When landings are projected to reach quota.

[1] See Figure 2 for delineation of migratory group ranges and allocation zones.
[2] The range of migratory groups varies by season (§ 642.29)—See Figure 2.
[3] See Figure 2 and § 642.21(e).
[4] See § 642.21(e).
[5] Purse Seines.
[6] Gulf and Atlantic.

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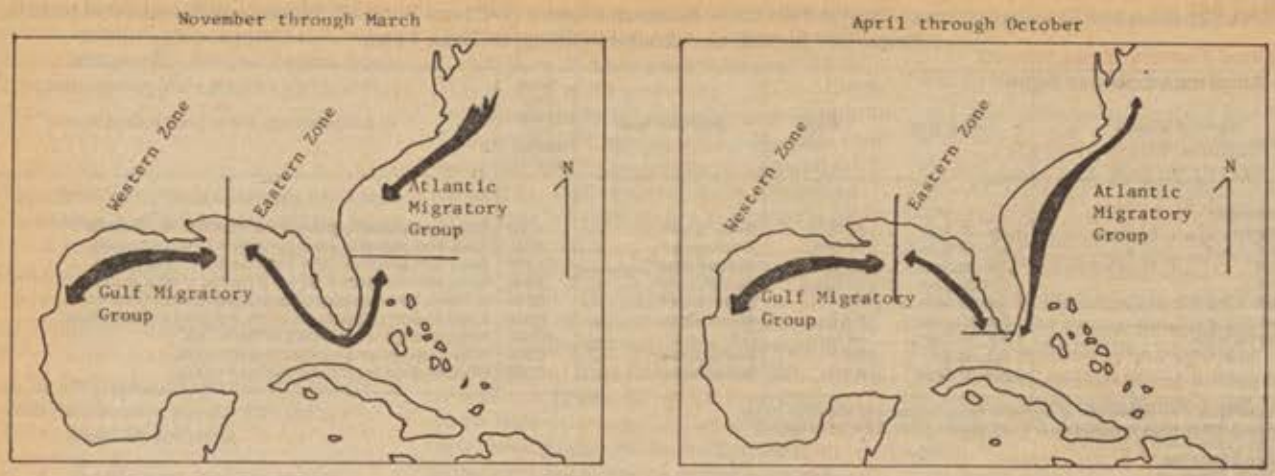
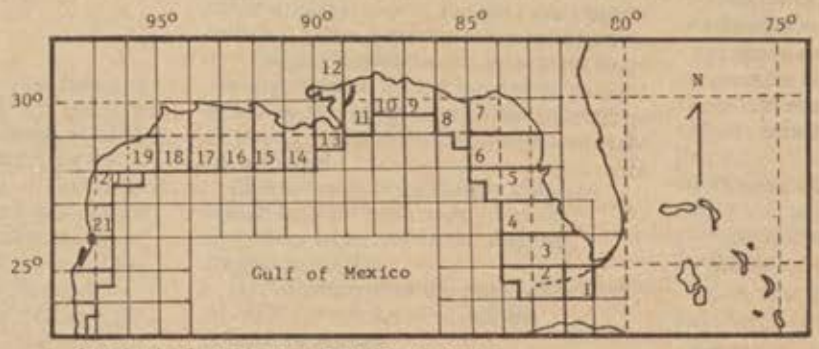
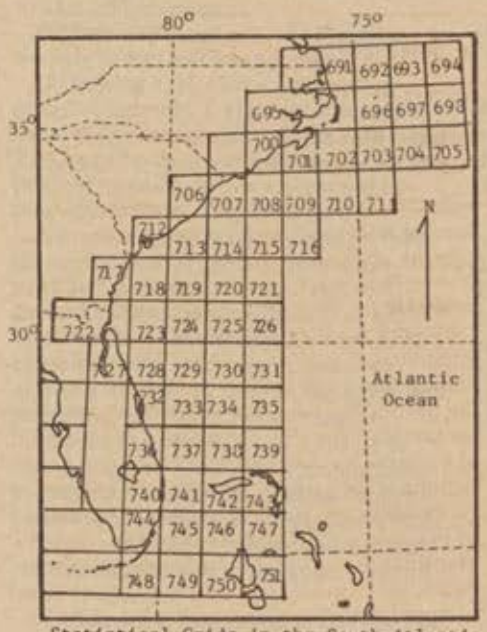


Figure 2. Range of Gulf and Atlantic migratory groups of king mackerel during winter and summer periods and commercial allocation zones for Gulf group king mackerel.



Statistical Grids in the Gulf of Mexico



Statistical Grids in the South Atlantic

Figure 3. Statistical Grids for Reporting the Harvest of Coastal Migratory Pelagic Fish.

50 CFR Part 649

New England Fishery Management Council; American Lobster Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: American Lobster Fishery Management Plan; Notice of public hearings and request for comments.

SUMMARY: The New England Fishery Management Council will hold a series of public hearings and provide a public comment period to obtain comments on two measures contained in proposed Amendment 1 to the American Lobster Fishery Management Plan. These measures are: (1) Gear marking requirements for the offshore lobster fishery; and (2) an exemption from the trap venting requirements for fishing black sea bass south of Barnegat Light to New Jersey.

DATES: Individuals and organizations may comment in writing to the Council if they are unable to attend the hearings. The public comment period will close June 24, 1985. See **"SUPPLEMENTARY INFORMATION"** for dates, times, and locations of the hearings.

ADDRESS: All written comments should be addressed to Chairman, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 617–231–0422.

SUPPLEMENTARY INFORMATION: The amendment proposes to institute a uniform offshore marking system for lobster fishing gear to contribute to the orderly prosecution of the lobster and mobile gear fisheries in the offshore waters of New England and Mid-Atlantic. The measures consist of a requirement to employ a radar reflector and flag on the westernmost end of a lobster trawl and only a radar reflector on the easternmost end of the trawl. Lobster pot trawls of three or fewer pots must be marked with a single buoy made of highly visible material. In addition, the maximum continuous length of any lobster trawl will not exceed 1½ miles as measured from buoy to buoy.

The amendment also proposes to incorporate an exemption to the current requirement for trap escape vents for Mid-Atlantic fishermen engaged in a fishery principally for black sea bass in the area south of Barnegat Light, seaward of the territorial sea, and shoreward of the 30-fathom contour. The current vent requirement would have a significant negative impact on their fish catch and would not produce significant benefits to the lobster resource. The maximum allowed bycatch of lobsters in these unvented traps would be limited to 100 pounds per trip.

The dates, times, and locations of the public hearings are shceduled as follows:

June 18, 1985, 5:30 p.m.—College of Marine Studies Complex, Cannon Lab Building, Room 203, 2nd Floor, 700 Pilottown Road, Lewes, Delaware

June 18, 1985, 7:00 p.m.—Holiday Inn, One Newbury Street (Route 1), Peabody, Massachusetts

June 19, 1985, 7:00 p.m.—Holiday Inn, Routes 1 and 3, Ellsworth, Maine

June 19, 1985, 10:00 p.m.—Howard Johnson's Motor Lodge, Route 37 and Hoper Avenue, Toms River, New Jersey

June 19, 1985, 7:00 p.m.—Holiday Inn, Jct. Route 1 and 138W, South Kingstown, Rhode Island

June 20, 1985, 7:00 p.m.—Holiday Inn-West, 81 Riverside Street, Portland, Maine

June 20, 1985, 7:00 p.m.—Massachusetts Maritime Academy, Buzzards Bay, Massachusetts

Dated: June 4, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–13876 Filed 6–7–85; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 669

[Docket No. 50586–5086]

Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues and requests comments on this proposed rule to implement the conservation and management measures as prescribed in the proposed Fishery Management Plan for the Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP). The proposed rule would (1) establish criteria for the construction of fish traps; (2) require owner identification and marking of gear and boats; (3) prohibit the hauling of or tampering with another person's traps without the owner's written permission; (4) prohibit the use of poisons, drugs, other chemicals, and explosives for the taking of reef fish; (5) establish a minimum size limitation on the harvest of yellowtail snapper and Nassau grouper; and (6) establish a closed season for the taking of Nassau grouper. The intended effect is to rebuild declining reef fish species in the fishery and reduce conflicts among fishermen.

DATES: Comments on the proposed rule must be received on or before July 20, 1985.

ADDRESSES: Comments on the proposed rule and requests for copies of the FMP, the regulatory impact review/initial regulatory flexibility analysis, and environmental impact statement should be sent to Donald W. Geagan, Southeast Region, National Marine Fisheries Service (NMFS), 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813–893–3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands was prepared by the Caribbean Council (Council), under the authority of the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act). A notice of availability of the FMP was published in the **Federal Register** on May 9, 1985 (50 FR 19559). These regulations are proposed to implement the FMP.

The FMP addresses the shallow-water reef fish fishery throughout its entire range and the proposed regulations are for the fishery conservation zone (FCZ) in the Caribbean Sea and Atlantic Ocean adjacent to Puerto Rico and the U.S. Virgin Islands. Of some 350 species of shallow-water reef fish in the Caribbean, about 180 are noted in the fishery landings and collectively comprise the most important fishery in the islands. The management unit consists of 14 principal families and 64 species (of the total 180 species) that regularly enter the fishery in quantity and which inhabit the zone from inshore to the shelf edge (at 40 fathoms).

This assemblage of species is utilized by about 2000 commercial fishermen, who use traps, hook and line, nets, seines, and spears to harvest the resource. Additionally, there are more than 12,000 recreational boats which may be used for fishing the same resource. Recreational fishermen use mainly hook and line and spears. Problems, such as trap poaching, have occurred within the commercial sector of the fishery.

The available data show a decline in catch per unit of effort by traps (the predominant gear in the fishery) in Puerto Rico since 1976; i.e., from 321

pounds (lbs) per trap in 1976 to 138 lbs. in 1980. Further declines have been experienced since, but the magnitude has not yet been defined. Total landings of shallow-water reef fish have also decreased each successive year since 1979. Data from the U.S. Virgin Islands indicate catch per unit of effort peaked in 1979 (347 lbs. per trap) and decliend to 254 lbs. per trap in 1982. Although total landings in the U.S. Virgin Islands have increased during this same period, the quality of the data from Puerto Rico is superior and is considered a better indicator of trends throughout the entire management area. Also, according to a special size-frequency survey conducted in 1983, the average size of certain species in the landings, notably yellowtail snapper and Nassau grouper, is less than that at first spawning—another symptom of growth overfishing. These conclusions were generally supported at a number of fact-finding meetings on the FMP. An immediate objective of the FMP is to restore stocks of these species to former levels of abundance through the institution of a combination of progressive size limits and closed seasons.

The intent of the Council in preparing this FMP is to protect the reef fish resource, which is of considerable value to the fishermen and citizens of Puerto Rico and the U.S. Virgin Islands. The reef fish fishery satisfies social customs and life styles and provides employment, income, recreation, and food. Total recreational and commercial shallow-water reef fish landings in 1982 were estimated at 7.5 million lbs., with a value of $8.7 million. This is the most important fishery in the management area in terms of both landings and value.

In addition to the economic problems that have resulted from growth overfishing, the threat to health posed by fish poisoning, or ciguatera, has resulted in loss of income to the fishermen. Although there is insufficient evidence regarding causative organisms to employ direct controls through management measures, the Council recommends that research be pursued to develop tests for determining the presence of ciguatoxins in fish before they are marketed. Once the causative organisms are isolated and their distribution and relationship to ciguatera determined, perhaps other controls, such as area closures, can be employed to curtail fish poisoning.

The Governments of Puerto Rico and the U.S. Virgin Islands have different management regimes which collectively are not adequate for solving the problems in the fishery. The U.S. Virgin Islands has a seaward boundary which extends to 3 nautical miles and Puerto Rico has fisheries jurisdiction out to 9 nautical miles. Because the fishery is limited to a narrow geological shelf area, most of which falls within these governments' zones of jurisdiction, a common regional management philosophy and framework is essential. Both governments have recognized the need for cooperation and have endorsed the Council as the appropriate mechanism to effect jurisdictional management of fisheries as a unit throughout their range in State and Federal waters. This cooperative working relationship is also being pursued with other Caribbean nations that share the same resources.

The Council adopted the following objectives as central to the management and conservation of shallow-water reef fish resources:

(a) Obtain the necessary data to allow for more accurate stock assessment and monitoring of the fishery.

(b) Stop the declining trend of the resource.

(1) Restore adult stocks to levels that ensure adequate spawning and recruitment to the population.

(2) Prevent the harvest of species of high value (e.g. snappers, groupers, and others) which are less than the optimum size.

(c) Reduce conflicts among users of the resource.

(d) Promote international cooperation in managing the pan-Carribbean species of the unit.

(e) Help solve the ciguatera problem.

Optimum Yield

There are many difficulties in estimating the potential fisheries yield of insula, tropical shallow-water banks. So many different researchers and methods of estimating the maximum sustainable yield (MSY) have surfaced in recent years, that making such estimates has evolved into a classic fisheries management problem. After careful consideration of all possibilities, the "biomass approach" was selected to calculate MSY for this fishery, since it utilizes the best available data which apply to the area addressed by the FMP. The estimated MSY is 7.7 million pounds.

The Council established the optimum yield (OY) for this fishery as all of the fishes in the management unit that can be harvested by U.S. fishermen under the provisions of the FMP; i.e., gear and size restrictions, as well as closed seasons for certain species. This amount is currently estimated at 7.7 million pounds, which is equivalent to the MSY estimate for this fishery.

Size Restrictions

Data from the 1983 size-frequency survey indicate that 42 percent of the yellowtail snapper and nearly all of the Nassau grouper landed are less than the respective optimum sizes of 12 and 24 inches necessary to sustain recruitment to the fishery. The FMP sets forth a procedure for progressively increasing the minimum size limits beginning at 8 inches total length for yellowtail snapper and 12 inches total length for Nassau grouper and increasing at the rate of 1 inch per year until the optimum specified sizes are eventually reached. This approach will allow the rebuilding of these overfished resources with a minimum of social and economic disruption. By starting with a minimum size of 8 inches for yellowtail snapper and increasing the size limit to 12 inches over a period of 5 years, a portion of the catch will be returned to the water each year, thereby allowing these fish to enter the fishery later at a larger and more valuable size. This amount will vary from about 5 percent the first year to about 9 percent by the fifth year. It is estimated that annual production of yellowtail snapper will increase by about 200,000 pounds by the end of the tenth year. For Nassau grouper, annual gains in production are expected to amount to approximately 400,000 pounds by year 13 when the size limit is stabilized at 24 inches.

Notice of annual changes in minimum fish size limits will be published in the **Federal Register** annually in advance of the date of effectiveness, and will be announced to affected user groups through news releases throughout the area of concern. The Council by plan amendment will add minimum sizes for other species, as appropriate, by monitoring the fishery in accordance with the FMP, that is using yield-per-recruit analysis or *ad hoc* surveys to detect significant changes that merit establishing or changing minimum sizes for any high value species to impede growth overfishing. If a new size is warranted, the Council will prepare the appropriate documents recommending the pertinent adjustments to the FMP and regulations.

Closed Season

Further restrictions on the harvest of Nassau grouper are proposed to aid in the restoration of this once abundant and valuable species. Nassau grouper spawn in aggregations from January through April in certain areas off the U.S. Virgin Islands and Puerto Rico. Spawning aggregations have been fished with such intensity that many have been

depleted. According to fishermen at the fact-finding meetings, overfishing of spawning aggregations has caused the diminution of the Nassau grouper population. Therefore, the possession of any Nassau grouper, regardless of size, will be prohibited from January 1 through March 31 of each year, or for 75 percent of the period in which spawning aggregations are known to occur. Although total closure would undoubtedly afford maximum protection to the spawning stock, reducing effort over 75 percent of the spawning season coupled with the annual incremental size limitation is expected to be sufficient for the recovery of the Nassau grouper population and, at the same time, cause less socio-economic disruption.

Gear and Harvest Limitations

The most abundant gear used in the harvest of shallow-water reef fish is the West Indian "arrowhead" or "chevron" fish trap. These traps are built mainly of wooden sticks or iron rods for the frame and covered with chicken wire. The Council determined that a minimum mesh size of 1¼ inch (in the smallest dimension) will allow the escape of juveniles of any commercially and recreationally important species that later will be harvested at a more desirable size while, at the same time, allow the retention of the adults of other commercially important species such as goatfishes, grunts, parrotfishes, etc. The 1¼ inch mesh will apply one year after the effective date of the final rule. The Council will continue to evaluate the effectiveness of other mesh sizes, but in the meantime this measure will prevent the use of smaller, less desirable mesh sizes.

Many fish traps are lost each year due to ship traffic, theft, and bad weather. In order to enhance the opportunities for fishes to escape from lost traps, a measure requiring a degradable panel or degradable door fastening in fish traps is required. This will increase the probability of survival of fishes that would otherwise perish and allow these fish to enter the fishery, later benefitting fishermen.

The use of poisons, drugs, other chemicals, and explosives for fishing in the FCZ is prohibited. This measure will prevent alteration and destruction of habitat and incidental mortality of non-target species.

The FMP proposes certain other limitations on fishing practices involving fish trap users to reduce conflicts within the fishery and to aid in the enforcement of these regulations. Owner identification and marking of traps, buoys, and boats are required. The marking of the gear employed in this fishery will alleviate the problem of trap theft and will help in the enforcement of regulations that prohibit the hauling on or tampering with another person's traps.

Classification

Section 304(a)(1)(C)(ii) of the Magnuson Act, as amended by Pub. L. 97–453, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 30 days of receipt of the FMP and regulations. At this time the Secretary has not determined that the FMP these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared a draft environmental impact statement for this FMP; a notice of availability was published on June 8, 1984 (49 FR 23915).

The NOAA administrator determined that this proposed rule is not a "major" rule requiring a regulatory impact analysis under Executive Order 12291. Based on the regulatory impact review prepared, the regulations will have 10-year net impact on the economy of only $3.7 million with a maximum annual impact of $894,489. The regulations are not expected to have a significant adverse effect on the fishery, or cause a major increase in either costs to industry or prices to the consumer because the management regime (1) does not limit access to the fishery or alter fishing practices for the majority of firms involved; (2) affects only about seven percent of the fishery; (3) phases the minimum size limits into the fishery over several years; and (4) reflects the existing practices of most of the vessels in the fishery. Because the above factors will minimize any impacts incurred, the costs imposed on fishermen, including small boat operators, are expected to be relatively minor. During the first year of implementation, any lost revenue associated with the size limit restrictions and the closed season for Nassau grouper are estimated to be less than one percent of the total amount earned by the average vessel, assuming impacts are evenly distributed among the fleet. Revenues in subsequent years are expected to recover to levels well above those experienced prior to implementation of the regulations. The Council prepared a regulatory impact review which concludes that this rule will have the following economic affects:

The minimum size regulation for Nassau grouper and yellowtail snapper and the closed season for Nassau grouper will result in a loss of $165,000 the first year and $80,000 the second year. After the second year, however, there will be a gross gain which will amount to $5.0 million over a period of 10 years. The net benefit over the ten-year period after subtracting the enforcement costs ($1.0 million) and the cost of FMP preparation ($0.2 million) will be about $3.8 million with a present value of $1.7 million.

This proposed rule is exempted from the procedures of Executive Order 12291 under section 8(a)(2) of that Order. Deadlines imposed under the Magnuson Act require the Secretary to publish this proposed rule 30 days after its receipt. Accordingly, the proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow procedures of the Order.

The Council prepared an initial regulatory flexibility analysis as part of the regulatory impact review which concludes that this proposed rule, if adopted, would not have significant effects on small entities. These effects are included in the DRIR which is summarized above. A copy of this analysis is available from the Council at the **ADDRESS** listed above.

This rule contains a requirement for collection-of-information (for the issuance of vessel and gear identification numbers and markings) subject to the Paperwork Reduction Act (PRA). A request to collect this information has been submitted to the Office of Management and Budget for review under section 3504(h) of the PRA.

The Council determined that this rule does not directly affect the coastal zone of either State's approved coastal zone management program.

List of Subjects in 50 CFR Part 669

Fish, Fisheries, Fishing.

Dated: June 5, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set forth in the preamble, Chapter VI of 50 CFR is proposed to be amended by adding a new Part 669 to read as follows:

PART 669—SHALLOW-WATER REEF FISH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Subpart A—General Provisions

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Subpart B—Management Measures

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

Subpart A—General Provisions

§ 669.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Shallow-water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands prepared by the Caribbean Fishery Management Council under the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act).

(b) This part regulates fishing for shallow-water reef fish within the Atlantic Ocean and Caribbean Sea portions of the fishery conservation zone (FCZ) adjacent to the State waters of Puerto Rico and the U.S. Virgin Islands.

§ 669.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meaning:

Authorized officer means

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Fish in the shallow-water reef fish fishery means any of the following species:

Squirrelfishes—Holocentridae Family
Squirrelfish, *Holocentrus ascensionis*
Longspine squirrelfish, *Holocentrus rufus*

Groupers—Serranidae Family
Rock hind, *Epinephelus adscensionis*
Graysby, *Epinephelus cruentatus*
Coney, *Epinephelus fulvus*
Red hind, *Epinephelus guttatus*
Jewfish, *Epinephelus itajara*
Nassau grouper, *Epinephelus striatus*
Yellowfin grouper, *Mycteroperca venenose*

Jacks—Carangidae Family
Yellow jack, *Caranx bartholomaei*
Blue runner, *Caranx crysos*
Horse-eye jack, *Caranx latus*
Black jack, *Caranx lugubris*
Bar jack, *Caranx ruber*

Snappers—Lutjanidae Family
Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Mangrove snapper, *Lutjanus griseus*
Dog snapper, *Lutjanus jocu*
Mahogany snapper, *Lutjanus mahogani*
Lane snapper, *Lutjanus synagris*
Yellowtail snapper, *Ocyurus chrysurus*

Grunts—Haemulidae Family
Margate, *Haemulon album*
Tomtate, *Haemulon aurolineatum*
French grunt, *Haemulon flavolineatum*
White grunt, *Haemulon plumieri*
Bluestriped grunt, *Haemulon sciurus*

Porgies—Sparidae Family
Sea bream, *Archosargus rhomboidalis*
Jolthead porgy, *Calamus bajonado*
Sheepshead porgy, *Calamus penna*
Pluma, *Calamus pennatula*

Goatfishes—Mullidae Family
Yellow goatfish, *Mulloidichthys martinicus*
Spotted goatfish, *Pseudupeneus maculatus*

Butterflyfishes—Chaetodontidae Family
Foureye butterflyfish, *Chaetodon capistratus*
Spotfin butterflyfish, *Chaetodon ocellatus*
Banded butterflyfish, *Chaetodon striatus*

Angelfishes—Pomacanthidae Family
Queen angelfish, *Holacanthus ciliaris*
Rock beauty, *Holacanthus tricolor*
Gray angelfish, *Pomacanthus arcuatus*
French angelfish, *Pomacanthus paru*

Wrasses—Labridae Family
Spanish hogfish, *Bodianus rufus*
Puddingwife, *Halichoeres radiatus*
Pearly razorfish, *Hemipteronotus novacula*
Hogfish, *Lachnolaimus maximus*

Parrotfishes—Scaridae Family
Midnight parrotfish, *Scarus coelestinus*
Blue parrotfish, *Scarus coeruleus*
Striped parrotfish, *Scarus croicensis*
Rainbow parrotfish, *Scarus guacamaia*
Princess parrotfish, *Scarus taeniopterus*
Queen parrotfish, *Scarus vetula*
Redband parrotfish, *Sparisoma aurofrenatum*
Redtail parrotfish, *Sparisoma chrysopterum*
Stoplight parrotfish, *Sparisoma viride*

Surgeonfishes—Acanthuridae Family
Ocean surgeonfish, *Acanthurus bahianus*
Doctorfish, *Acanthurus chirurgus*
Blue tang, *Acanthurus coeruleus*

Leatherjackets—Balistidae Family
Queen triggerfish, *Balistes vetula*
Ocean triggerfish, *Canthidermis sufflamen*
Black durgon, *Melichthys niger*
Sargassum triggerfish, *Xanthichthys ringens*

Boxfishes—Ostraciidae Family
Spotted trunkfish, *Lactophrys bicaudalis*
Honeycomb cowfish, *Lactophrys polygonia*
Scrawled cowfish, *Lactophrys quadricornis*
Trunkfish, *Lactophrys trigonus*
Smooth trunkfish, *Lactophrys triqueter*

Fish trap or *trap* means any trap and the component parts thereof (including lines and buoys) used for taking finfish, regardless of the construction material.

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing; including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

Official number means the documentation number issued by the U.S. Coast Guard or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

Operator with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner with respect to any vessel, means

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time or voyage;

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraph (a), (b) or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Regional Director means the Director, or a designee, Southeast Region, National Marine Fisheries Service, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone 813-893-3141.

Secretary means the Secretary of Commerce, or a designee.

State means the Commonwealth of Puerto Rico and the U.S. Virgin Islands.

Total length means the greatest possible length of a fish with the mouth of the fish closed and the caudal fin (tail) squeezed together to give the greatest over-all measurement (Figure 1).

U.S. fish processors means facilities located within the United States for, and vessels of the United States used for or equipped for, the processing of fish for commercial use or consumption.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery regulated by a fishery management plan or preliminary fishery management plan implemented under the Magnuson Act.

Vessel of the United States means

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and measuring less than 5 net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and used exclusively for pleasure.

§ 669.3 Relationship to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) Certain responsibilities relating to data collection, issuance of permits, and enforcement may be performed by authorized State personnel under a cooperative agreement entered into by the State, the U.S. Coast Guard, and the Secretary.

§ 669.4 Permits.

No permits are required for fishing vessels engaged in the shallow-water reef fishery within the FCZ (see vessel and gear identification requirements in § 669.6).

§ 669.5 Recordkeeping and reporting requirements [Reserved]

§ 669.6 Vessel and gear identification.

(a) *Applicability.* A vessel in the commercial shallow-water reef fish fishery fishing with traps in the FCZ must obtain an identification number and color code issued by the Regional Director unless the vessel possesses a valid identification number and color code issued by the Government of Puerto Rico or the Government of the U.S. Virgin Islands.

(b) *Application to the Regional Director.*

(1) An application for an identification number and color code must be submitted to the Regional Director 45 days prior to the date on which the applicant desires receipt.

(2) Each application must contain the following information:

(i) The applicant's name, mailing address, and telephone number;

(ii) The name and length of the vessel;

(iii) The vessel's official number; and

(iv) The vessel's radio call sign.

(c) *Vessel identification.* Each fishing vessel must display the identification number and color code issued to the vessel by the Regional Director or State on the port and starboard sides of the deckhouse or hull. In addition, each vessel over 25 feet long must display its identification number and color code on an appropriate weather deck. All identification numbers and color codes must be displayed permanently and conspicuouly so as to be readily identifiable from the air and water. The number must contrast with the background and be in block Arabic numerals at least 18 inches high for vessels over 65 feet long, at least 10 inches high for vessels over 25 feet long, and at least 3 inches high for vessels 25 feet long or less. The color code representation must be in the form of a circle not less than 18 inches in diameter or a strip not less than 18 inches high and 18 inches long for vessels over 65 feet long; a circle not less than 10 inches in diameter or a strip not less than 10 inches high and 18 inches long for vessels over 25 feet long; and a circle not less than 3 inches in diameter or a strip not less than 3 inches high and 10 inches long for vessels 25 feet long or less.

(d) *Duties of operator.* The operator of each fishing vessel subject to this part must

(1) Keep the identification number and color code clearly legible and in good repair.

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or anything else aboard obstructs the view of the identification number and color code from an enforcement vessel or aircraft.

(e) *Gear identification.* (1) All traps and buoys used in the shallow-water reef fish fishery must be marked and identified as follows:

(i) Buoys affixed to traps must bear the number and color code specified for the vessel. The identification number must be legible and at least 3 inches high on each buoy.

(ii) Traps must bear the number specified for the vessel. The number must be legible and at least 3 inches high, or as high as the widest available space if such space is less than 3 inches wide. As an alternative, the number may be stamped on a plate of non-corrosive metal or plastic and securely affixed to the trap.

(2) Traps and buoys for shallow-water reef fish fished in the FCZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to shallow-water reef fish traps which are lost or sold if the owner of such traps reports in writing the loss or sale within 15 days to the Regional Director, the Government of Puerto Rico, or the Government of the U.S. Virgin Islands, whichever entity issued the vessel's identification number and color code.

(3) Unmarked traps for shallow-water reef fish deployed in the FCZ at any time are illegal gear and may be disposed of in any appropriate manner by the Seceretary or the Secretary's designee (including an authorized officer). Lines and buoys are considered part of the trap. If owners of the unmarked traps can be ascertained, those owners remain subject to appropriate civil penalties.

§ 669.7 Prohibitions.

(a) It is unlawful for any person to do any of the following:

(1) Fish with traps for shallow-water reef fish in the FCZ without an identification number and color code as required by § 669.6;

(2) Falsify or fail to affix and maintain gear and vessel markings as required by § 669.6;

(3) Possess in or harvest from the FCZ Nassau grouper during the closed fishing season specified in § 669.21;

(4) Tend, open, pull, or otherwise molest or have in one's possession aboard a fishing vessel another person's fish traps except as provided in § 669.22;

(5) Possess in or harvest from the FCZ yellowtail snapper less than the mimimum size specified in § 669.23(a);

(6) Possess in or harvest from the FCZ Nassau grouper less than the minimum size limit specified in § 669.23(b);

(7) Possess in the FCZ or land any shallow-water reef fish harvested in the FCZ without head and fins intact as specified in § 669.23(d);

(8) Possess or use fish traps in the FCZ with a mesh size smaller than the size limit specified under § 669.24(a)(1);

(9) Possess, or use fish traps in the FCZ without a degradable panel or degradable door fastening as specified in § 669.24(a) (2) and (3);

(10) Fish for shallow-water reef fish in the FCZ with explosives, including powerheads as specified in § 669.24(b)(1);

(11) Fish for shallow-water reef fish in the FCZ with drugs, poisons, or other chemicals as specified in § 669.24(b)(2);

(12) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any shallow-water reef fish or parts thereof taken or retained in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act;

(13) Fail to comply immediately with enforcement and boarding procedures specified in § 669.8;

(14) Refuse to allow an authorized officer to board a fishing vessel subject to such person's control for purpose of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(15) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search or inspection under the Magnuson Act;

(16) Interfere with, delay, obstruct, or prevent by any means a lawful investigation or search in the process of enforcing this part;

(17) Interfere with, obstruct, delay, or in any other manner prevent the seizure of illegally taken shallow-water reef fish or the final disposition of such shallow-water reef fish through the sale of the shallow-water reef fish;

(18) Resist a lawful arrest for any act prohibited by this part;

(19) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this part; or

(20) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested shallow-water reef fish to any foreign fishing vessel, while such foreign vessel is in the FCZ unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act which authorizes the receipt by such vessel of the U.S.-harvested fish of the species concerned.

(b) It is lawful to violate any other provisions of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

§ 669.8 Facilitation of enforcement.

(a) *General.* The operator of or any other person aboard any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable) and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF–FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to allow an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF–FM, if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and,

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following additional signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communication by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "A" repeated (. – .–)[1], is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY–CY" (. – .–– . ––– . –. – . – –) means "You should proceed at slow speed, a boat is coming to you." The signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (. . . – –. – . . . – –) means "You should stop or heave to: I am going to board you."

(4) "L" (. – ..) means "You should stop your vessel instantly."

§ 669.9 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Magnuson Act, and to 50 CFR Part 621, and 15 CFR Part 904 (Civil Procedures), and other applicable law.

[1] Period (.) means a short flash of light; dash (–) means a long flash of light.

Subpart B—Management Measures

§ 669.20 Fishing year.

The fishing year for the shallow-water reef fish fishery begins on January 1 and ends on December 31.

§ 669.21 Closed seasons.

The fishing season for Nassau grouper in the FCZ is closed from 0001 hours January 1 through 2400 hours March 31, local time. Nassau grouper taken during this period must be returned to the sea immediately with a minimum amount of harm.

§ 669.22 Harvest limitations.

Fish traps may be tended or pulled only by persons (other than authorized officers) aboard the fish trap owner's vessel(s), or aboard another vessel if such vessel has aboard written consent of the fish trap owner, or if the fish trap owner is aboard and has documentation verifying the identification number and color code. Owner's letter of consent must specify effective time period, and trap owner's vessel identification number and color code.

§ 669.23 Size limitations.

(a) The minimum size limit for the harvest or possession of yellowtail snapper in the FCZ is 8 inches in total length. Effective September 22, 1986, the minimum size of yellowtail snapper will be increased to 9 inches. On each September 22, the minimum size will be increased one inch until reaching a minimum size of 12 inches total length on September 22, 1989.

(b) The minimum size limit for the harvest or possession of Nassau grouper in the FCZ is 12 inches in total length. Effective September 22, 1986, the minimum size of Nassau grouper will be increased to 13 inches. On each September 22, the minimum size will be increased one inch until reaching a minimum size of 24 inches total length on September 22, 1997.

(c) Undersized yellowtail snapper and Nassau grouper must be returned to the water immediately and with minimum harm.

(d) All shallow-water reef fish harvested in the FCZ and subject to minimum size limits specified in this section must be landed with the head and fins and tail intact.

§ 669.24 Gear limitations.

(a)(1) Effective September 22, 1986, fish traps must have a minimum mesh size of at least 1¼ inches in the smallest dimension of the mesh opening.

(2) Fish traps must have a degradable panel or degradable door fastening made of may materials listed in paragraph (a)(3). The panel and door opening must not be smaller than either of the entry ports or funnel opening of the trap.

(3) Degradable material must be untreated fiber of biological origin, not more than three millimeters (approximately ⅛") maximum diameter, including but not limited to tyre palm, hemp, jute, cotton, wool, or silk, or non-galvanized black iron wire not more than 1.59 millimeters (approximately one-sixteenth inch) in diameter; that is, 16 gauge wire.

(b)(1) Explosives, including powerheads, may not be used to fish for shallow-water reef fish in the FCZ.

(2) Poisons, drugs, and other chemicals may not be used to fish for shallow-water reef fish in the FCZ.

§ 669.25 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities which are otherwise prohibited by these regulations.

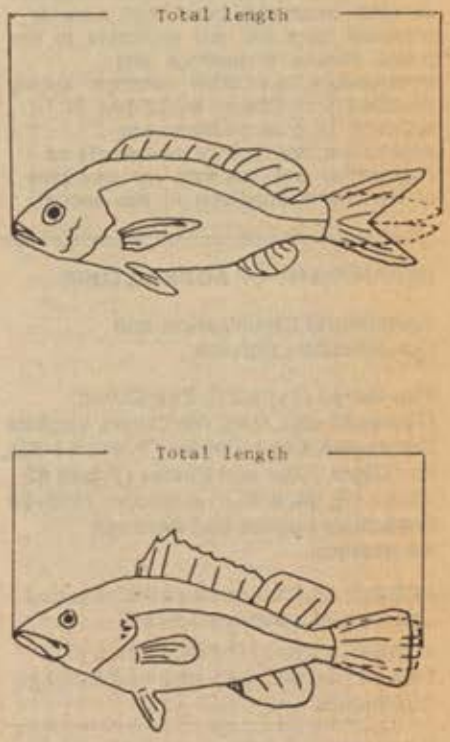

Figure 1. Measurement of total length for fishes with a forked tail, yellowtail snapper (top) and with a rounded tail, Nassau grouper (bottom).

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Notices

Federal Register
Vol. 50, No. 111
Monday, June 10, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Fire-Cured (Type 21), Fire-Cured (Types 22–23), Dark Air-Cured, Virginia Sun-cured, Cigar-Binder (Types 51–52), and Cigar-Filler and Binder (Types 42, 43, 44, 53, 54, & 55) Tobaccos; 1985–86 Marketing Quotas and Acreage Allotments

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Determination of 1985–86 Marketing Quotas and Acreage Allotments.

SUMMARY: The purpose of this notice is to affirm determinations which were made by the Secretary of Agriculture on January 24, 1985, with respect to the 1984 crops of fire-cured (type 21), fire-cured (types 22–23), dark air-cured, Virginia sun-cured, cigar-binder, and cigar-filler and binder tobaccos. In addition to other determinations, the Secretary declared national acreage allotments for the following kinds of tobaccos: Fire-cured (type 21), 7,782 acres; fire-cured (types 22–23), 22,328 acres; dark air-cured, 8,195 acres; Virginia sun-cured, 1,076 acres; cigar-binder (types 51–52), 2,028 acres; and cigar-filler and binder (types 42–44 & 53–55), 11,554 acres

Separate referenda for cigar.binder (types 51–52), fire-cured, and dark air-cured tobaccos were held during the period February 19–22, 1985, by mail to determine whether these producers favor quotas for the next three marketing years. Producers disapproved marketing quotas for cigar-binder (types 51–52) tobacco.

EFFECTIVE DATE: January 24, 1985.

FOR FURTHER INFORMATION CONTACT: Robert L. Tracy, Agricultural Economist, Analysis Division, ASCS, Room 3736 South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447—5187.

The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations 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 geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program that this notice applies to are: Title—Commodity Loans and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Under section 312(a) of the Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "Act"), the Secretary is required to proclaim not later than February 1 of any marketing year with respect to any kind of tobacco, other than flue-cured tobacco, a national marketing quota for any kind of tobacco for each of the next 3 marketing years if such marketing year is the last year of three consecutive years for which marketing quotas previously proclaimed will be in effect. This is the case with respect to fire-cured and dark air-cured tobaccos. Also, since producers of cigar-binder (types 51–52) tobacco have not disapproved quotas for 3 consecutive years, the Secretary is required to proclaim quotas for this kind of tobacco. The Act also requires the Secretary to announce the reserve supply level and the total supply of fire-cured (type 21), fire-cured (types 22–23), dark air-cured, Virginia sun-cured, cigar-binder (types 51–52), and cigar-filler and binder (types 42–44 & 53–55) tobaccos for the marketing year beginning October 1, 1984, and to announce for the 1985–86 marketing year the amounts of the national marketing quotas, national acreage allotments, and national acreage factors for apportioning the national acreage allotments (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (a) new farms and (b) making corrections and adjusting inequities in old farm allotments for fire-cured (type 21), fire-cured (types 22–23), dark air-cured, Virginia sun-cured, cigar-binder (types 51–52), cigar-filler and binder (types 42–44 & 53–55) tobaccos.

These determinations have been made on the basis of the latest available statistics of the Federal Government, and after consideration of data, views, and recommendations received from tobacco producers and others in response to a Notice of Proposed Determination which was published on November 14, 1984 (49 FR 45034).

Pursuant to the provisions of section 317(c) of the Act, it has been determined that acreage-poundage quotas will not be announced for the 1985–86 marketing year for any of these kinds of tobaccos since such quotas would not result in a more effective marketing quota program for such kinds of tobacco.

Discussion of Comments

Twenty-four written responses were received. Some of these comments addressed the establishment of quotas with respect to more than one kind of tobacco. A summary by kind of tobacco is as follows:

Fire-cured (type 21) tobacco: Four comments were received. All of these comments recommended that the marketing quotas established for this kind of tobacco be established on an acreage basis at the same level which was applicable for the 1984 marketing year.

Virginia sun-cured (type 37) tobacco: Three comments were received. All of these comments recommended that the marketing quotas established for this kind of tobacco be established on an acreage basis at the same level which was applicable for the 1984 marketing year.

Fire-cured (types 22–23) tobacco: Ten comments were received. Eight comments recommended that the marketing quotas be reduced by 10 to 15 percent from the 1984 marketing quota. The other two comments did not address the establishment of marketing quotas.

Dark air-cured tobacco: Seven comments were received. Five comments recommended that the marketing quotas be reduced by 10 to 15 percent from the 1984 marketing year; the other two comments did not address the establishment of marketing quotas.

Cigar binder (types 51–52) tobacco: No comments were received.

Cigar-filler and binder (types 42–44 & 53–55) tobacco: Seven comments were received. Six recommended that marketing quotas established for this kind of tobacco be established on an acreage basis at the same level which was applicable for the 1984 marketing year.

One comment recommended that the marketing quota should be increased by 10 percent from 1984.

No comments were received with respect to the method of holding a referendum.

In addition to the written comments, a meeting was held to discuss the establishment of marketing quotas for Kentucky-Tennessee fire-cured and dark air-cured tobaccos. A combined total of 10 comments were made. These comments were similar to the written comments.

Statutory provisions

Section 312(b) of the Act provides, in part, that the amount of the national marketing quota for a kind of tobacco is the total quantity of that kind of tobacco which may be marketed which will make available during such marketing year a supply of such tobacco equal to the reserve supply level. Since producers of these kinds of tobacco generally produce less than their respective national acreage allotments, it has been determined that a larger quota would be necessary to make available production equal to the reserve supply level. The amount of the national marketing quota so announced may, not later than the following March 1, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restriction of marketings in adjusting the total supply to the reserve supply level.

Definitions

Section 301(b)(14)(B) of the Act defines "reserve supply level" as the normal supply, plus 5 percent thereof, to insure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty. The "normal supply" is defined in section 301(b)(1)(B) of the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic use an 65 percent of a normal year's exports as an allowance for a normal year's carryover. A "normal year's domestic consumption" is defined in section 301(b)(11)(B) of the Act as the average quantity produced and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption.

A "normal year's exports" is defined in section 301(b)(12) of the Act as the average quantity produced in and exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

Fire-Cured (Type 21) Tobacco

The yearly average quantity of fire-cured (type 21) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1984–85 marketing year was approximately 2.3 million pounds. The average annual quantity of fire-cured (type 21) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1984–85 marketing year was 3.0 million pounds (farm sales weight basis). Domestic sue has shown an upward trend, while exports have trended downward. Accordingly, a normal year's domestic consumption has been set at 3.0 million pounds while a normal year's exports have been set at 2.5 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 12.9 million pounds.

Manufacturers and dealers reported stocks of fire-cured (type 21) tobacco held on October 1, 1984, of 8.0 million pounds. The 1984 fire-cured (type 21) tobacco crop is estimated to be 5.8 million pounds. Therefore, the total supply of fire-cured (type 21) tobacco for the 1984–85 marketing year is 13.8 million pounds. During the 1984–85 marketing year, it is estimated that disappearance will total approximately 4.5 million pounds. By deducting this disappearance from the total supply, a carryover of 9.3 million pounds at the beginning of the 1985–86 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1985 is 3.6 million pounds. This represents the quantity of fire-cured (type 21) tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level.

During the past 5 years, slightly less than half of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota of 7.27 million pounds is necessary to make available production of 3.6 million pounds. Increasing the quota by 20 percent in accordance with section 312(b) of the Act to 8.7 million pounds is necessary to avoid undue restriction of marketings. This results in the 1985–86 national marketing quota of 8.7 million pounds.

In accordance with section 313(g) of the Act, the 1985–86 national marketing quota divided by the 1980–84 5-year national average yield of 1,118 pounds per acre results in a 1985 national acreage allotment of 7,781.75 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 0.90 is determined by dividing the national acreage allotment, less a national reserve of 50.0 acres, by the total of 1985 preliminary farm acreage allotments. The preliminary farm acreage allotment reflect the factors specificed in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Fire-Cured (Types 22–23) Tobacco

The yearly average quantity of fire-cured (types 22–23) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1984–85 marketing year was about 16.0 million pounds. The average annual quantity of fire-cured (types 22–23)

tobacco produced in the United States and exported during the 10 marketing years preceding the 1984–85 marketing year was 19.4 million pounds (farm-sales weight basis). Domestic use and exports are trending upward. Accordingly, a normal year's domestic consumption has been established at 21.0 million pounds and a normal year's exports at 24.0 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 102.2 million pounds.

Manufacturers and dealers reported stocks of fire-cured (types 22–23) tobacco on October 1, 1984, or 64.2 million pounds. The 1984 fire-cured (types 22–23) crop is estimated to be 47.8 million pounds. Therefore, the total supply of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1984, is 112.0 million pounds. During the 1984–85 marketing year, it is estimated that disappearance will total approximately 38.0 million pounds. By deducting this disappearance from the total supply, a carryover of 74.0 million pounds at the beginning of the 1985–86 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1985 is 28.2 million pounds. This represents the quantity of fire-cured (types 22–23) tobacco which may be marketed which will make available during the 1985–86 marketing year a supply equal to the reserve supply level. During the past 5 years, only approximately 85 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota for the 1985–86 marketing year of 33.1 million pounds is necessary to make available production of 28.2 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1985–86 national marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1985–86 marketing year of 39.7 million pounds.

The national acreage allotment for the 1985–86 marketing year is determined to be 22,328.46 acres. In accordance with section 313(g) of the Act, the national marketing quota for the 1985–86 marketing year has been divided by the 1980–84, 5-year national average yield of 1,778 pounds per acre, to obtain a national acreage allotment of 22,328.46 acres, for the 1985–86 marketing year.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of .90 is determined by dividing the national acreage allotment for the 1985–86 marketing year less a national reserve of 85 acres by the total of the 1985 preliminary farm acreage allotments. The preliminary far acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Dark Air-Cured Tobacco

The yearly average quantity of dark air-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1984–85 marketing year was approximately 13.8 million pounds. The average annual quantity produced domestically and exported during this period was 2.1 million pounds (farm-sales weight basis). Both domestic use and exports have been erratic. Accordingly, 17.6 million pounds have been used as a normal year's domestic consumption and 2.5 million pounds have been used as a normal year's exports. Application of the formula required by section 301(14)(B) of the Act results in a reserve supply level of 55.1 million pounds.

Manufacturers and dealers reported stocks of dark air-cured tobacco held on October 1, 1984, of 42.7 million pounds. The 1984 dark air-cured crop is estimated to be 17.5 million pounds. Therefore, the total supply for the market year beginning October 1, 1984, is 60.2 million pounds. During the 1984–85 marketing year, it is estimated that disappearance will total approximately 15.0 million pounds. By deducting this disappearance from the total supply, a carryover of 45.2 million pounds at the beginning of the 1985–86 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1985 is 9.9 million pounds. This represents the quantity of dark air-cured tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. During the last 5 years, slightly over 80 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota for the 1985–86 marketing year of 12.3 million pounds is necessary to make available production of 9.9 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1985–86 marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1985–86 marketing year of 14.8 million pounds.

In accordance with section 313(g) of the Act, the 1985–86 national marketing quota, divided by the 1980–84, 5-year national average yield of 1,806 pounds per acre, results in a national acreage allotment of 8,194.91 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 0.85 is determined by dividing the national acreage allotment, less a national reserve of 30 acres, by the total of the 1985 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less the national reserve, to old farms.

Virginia Sun-Cured Tobacco

The yearly average quantity of Virginia sun-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1984–85 marketing year was approximately 680 thousand pounds. The average annual quantity produced in the United States and exported during the same period was approximately 160 thousand pounds (farm-sales weight basis). Both domestic use and exports have shown a downward trend. Accordingly, 600 thousand pounds have been used as a normal year's domestic consumption and 100 thousand pounds have been used as a normal year's exports. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 2,000 thousand pounds.

Manufacturers and dealers reported stocks of Virginia sun-cured tobacco held on October 1, 1984, of 1,400 thousand pounds. The 1984 Virginia sun-cured tobacco crop is estimated to be 600 thousand pounds. Therefore, the total supply of Virginia sun-cured tobacco for the 1984–85 marketing year is 2,000 thousand pounds. During the 1984–85 marketing year, it is estimated that disappearance will total approximately 400 thousand pounds. By deducting this disappearance from the total supply, a carryover of 1,600 thousand pounds at the beginning of the 1985–86 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1985 is 400 thousand pounds. This represents the quantity of Virginia sun-cured tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. During

the last 5 years, only approximately 38 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota of 1,040 thousand pounds is necessary to make available production of 400 thousand pounds. Increasing the quota by 20 percent in accordance with section 312(b) of the Act to 1,250 thousand pounds is necessary to avoid undue restriction of marketings. This results in a national marketing quota for the 1985–86 marketing year of 1,250 thousand pounds.

In accordance with section 313(g) of the Act, the 1985–86 national marketing quota divided by the 1980–84 5-year national average yield of 1,162 pounds per acre, results in a 1985 national acreage allotment of 1,075.73 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of .90 is determined by dividing the national acreage allotment, less a national reserve of 5.0 acres, by the total of the 1985 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Cigar-Binder (Types 51–52) Tobacco

Marketing quotas were disapproved by producers with respect to the 1984 and 1985 marketing years.

The yearly average quantity of cigar-binder (types 51–52) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1984–85 marketing year, was approximately 2.6 million pounds. The average annual quantity of cigar-binder tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1984–85 marketing year was .1 million pounds (farm-sales weight basis). Both domestic use and exports have fluctuated within a narrow range. Accordingly, 2.5 million pounds have been used as a normal year's domestic consumption and .1 million pounds have been used as a normal year's exports. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 7.3 million pounds.

Manufacturers and dealers reported stocks of cigar-binder tobacco held on October 1, 1984 of 6.7 million pounds. The 1984 cigar-binder tobacco crop is estimated to be 1.9 million pounds. Therefore, the total supply of cigar-binder tobacco for the 1984–85 marketing year is 8.6 million pounds. During the 1984–85 marketing year, it is estimated that disappearance will total about 3.0 million pounds. By deducting the estimated disappearance during the 1984–85 marketing year from the total supply, a carryover of 5.6 million pounds at the beginning of the 1985–86 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1985 is 1.7 million pounds. This represents the quantity of cigarbinder tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. During the last 4 years, only approximately 56 percent of the national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota of 3.03 million pounds is necessary to make available production of 1.7 million pounds. In accordance with section 312(b) of the Act, an increase in the computed quota by 20 percent to 3.64 million pounds is necessary in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1985–86 marketing year of 3.64 million pounds.

In accordance with section 313(g) of the Act, the 1985–86 national marketing quota of 3.64 million pounds divided by the 1980–84 5-year national average yield of 1,795 pounds per acre results in a 1985 national acreage allotment of 2,027.86 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 15.0 acres, by the total of the 1985 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national allotment, less the national reserve, to old farms.

Cigar-Filler and Binder (Types 42–44 & 53–55) Tobacco

The yearly average quantity of cigar-filler and binder (types 42–44 & 53–55) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1984–85 marketing year was approximately 22.6 million pounds. The average annual quantity of cigar-filler and binder types 42–44 & 53–55) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1984–85 marketing year was very small. Domestic use is erratic, while exports are negligible.

Accordingly, a normal year's domestic consumption has been set at 26.2 million pounds while a normal year's exports has been set at 0.0 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 75.6 million pounds.

Manufacturers and dealers report stocks of cigar-filler and binder (types 42–44 & 53–55) tobacco held on October 1, 1984 of 64.4 million pounds. The 1984 cigar-filler and binder crop is estimated to be 17.7 million pounds. Therefore, the total supply of cigar-filler and binder (types 42–44 & 52–55) tobacco for the 1984–85 marketing year is 82.1 million pounds. During the 1984–85 marketing year, it is estimated that disappearance will total about 21.0 million pounds. By deducting this disappearance from the the total supply, a carryover of 61.1 million pounds at the beginning of the 1985–86 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1985 is 14.5 million pounds. This represents the quantity of cigar-filler and binder tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. During the past 5 years, approximately 78 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a 1985–86 national marketing quota of 18.6 million pounds is necessary to make available production of 14.5 million pounds. Increasing the quota by 20 percent in accordance with section 312(b) of the Act to 22.3 million pounds is necessary to avoid undue restriction of marketings. This results in a national marketing quota for the 1985–86 marketing year of 22.3 million pounds.

In accordance with section 313(g) of the Act, the 1985–86 national marketing quota of 22.3 million pounds divided by the 1980–84 5-year national average yield of 1,930 pounds per acre results in a 1985–86 national acreage allotment of 11,554.40 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 50.0 acres, by the total of the 1985 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less the national reserve, to old farms.

The purpose of this notice is to affirm the determinations of the national marketing quotas for the 1985 crops of

fire-cured (type 21), fire-cured (types 22–23), dark air-cured, sun-cured, cigar-binder (types 51–52), and cigar-filler and binder (types 42–44 & 53–55) tobacco which were announced by the Secretary on January 24, 1985 and to set forth certain other determinations with respect to these kinds of tobacco. On January 24, 1985 the Secretary also announced that the referenda to be conducted with respect to cigar-binder (types 51–52), fire-cured and dark-air cured tobacco would be conducted by mail.

Accordingly, the following determinations are announced:

DETERMINATIONS

Proclamations of National Marketing Quotas

1. Fire-Cured (Types 21–23)

Since the 1984–85 marketing year is the last of 3 consecutive years for which marketing quotas previously proclaimed will be in effect for fire-cured (types 21–23) tobacco, a national marketing quota for such kind of tabacco for each of the 3 marketing years beginning October 1, 1985, October 1, 1986, and October 1, 1987 is hereby proclaimed.

2. Dark Air-Cured (Types 35–36)

Since the 1983–84 marketing year is the last of 3 consecutive years for which marketing quotas previously proclaimed will be in effect for dark air-cured (types 35–36) tobacco, a national marketing quota for such kind of tobacco for each of the 3 marketing years beginning October 1, 1985, October 1, 1986, and October 1, 1987 is hereby proclaimed.

3. Cigar-Binder (Types 51–52)

Since cigar-binder tabacco farmers voting in a referendum in February 1984, disapproved quotas for the 3 marketing years beginning October 1, 1984, and since such disapproval was not the third consecutive disapproval of quotas for cigar-binder tobacco, a national marketing quota for such kind of tobacco for each of the 3 marketing years beginning October 1, 1985, October 1, 1986, and October 1, 1987 is hereby proclaimed.

Determinations 1985–86 Marketing Year

For fire-cured (type 21) tobacco for the marketing year beginning October 1, 1985:

(a) *Reserve supply level.* The reserve supply level for fire-cured (type 21) tobacco is 12.9 million pounds.

(b) *Total supply.* The total supply of fire-cured (type 21) tobacco for the marketing year beginning October 1, 1984, is 13.8 million pounds.

(c) *Carryover.* The estimated carryover of fire-cured (type 21) tobacco for the marketing year beginning October 1, 1985, is 9.3 million pounds.

(d) *National marketing quota.* The amount of fire-cured (type 21) tobacco which will make available during the marketing year beginning October 1, 1985 a supply equal to the reserve supply level of such tobacco is 3.6 million pounds. Because producers have been producing slightly less than half of the announced national marketing quota during the past 5 marketing years, a national marketing quota of 7.27 million pounds is hereby announced. It is further determined, however, that a national marketing quota in the amount of 7.27 million pounds would result in undue restriction of marketings during the 1985–86 marketing year in adjusting the total supply to the reserve supply level. Accordingly, such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for fire-cured (type 21) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1985 is 8.7 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 7,781.75 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments is .90.

(g) *National reserve.* The national acreage is 50 acres of which 10 acres are made available for 1985 new farms and 40 acres are made available for making corrections and adjusting inequities in old farms allotments.

For fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1985:

(a) *Reserve supply level.* The reserve supply level for fire-cured (types 22–23) tobacco is 102.2 million pounds.

(b) *Total supply.* The total supply of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1984, is 112.0 million pounds.

(c) *Carryover.* The estimated carryover of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1985, is 74.0 million pounds.

(d) *National marketing quota.* The amount of fire-cured (types 22–23) tobacco which will make available during the marketing year beginning October 1, 1985, a supply equal to the reserve supply level of such tobacco is 28.2 million pounds. Because producers have been producing about 85 percent of the announced national marketing quota during the past 5 marketing years, it has been determined that a national marketing quota for the 1985–86 marketing year of 33.1 million pounds is necessary to make available production of 28.2 million pounds. Accordingly, a 1985–86 national marketing quota of 33.1 million pounds is hereby announced. It has been determined, however, that the 1985–86 national marketing quota in the amount of 33.1 million pounds would result in undue restrictions of marketings during the 1985–86 marketing year in adjusting the total supply to the reserve supply level. Accordingly, such amount is hereby increased by 20 percent. Therefore, the amount of the 1985–86 national marketing quota for fire-cured (types 22–23) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1985, is 39.7 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 22,328.46 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1985–86 marketing year is .90.

(g) *National reserve.* The national acreage reserve is 85.0 acres of which 15.0 acres are made available for 1985 new farms, and 70.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

For dark air-cured tobacco for the marketing year beginning October 1, 1985:

(a) *Reserve supply level.* The reserve supply level for dark air-cured tobacco is 55.1 million pounds.

(b) *Total supply.* The total supply of dark air-cured tobacco for the marketing year beginning October 1, 1984, is 60.2 million pounds.

(c) *Carryover.* The estimated carryover of dark air-cured tobacco for the marketing year beginning October 1, 1985, is 45.2 million pounds.

(d) *National marketing quota.* The amount of dark air-cured tobacco which will make available during the marketing year beginning October 1, 1985, a supply equal to the reserve supply level of such tobacco is 9.9 million pounds. Because producers have been producing slightly over 80 percent of the announced national marketing quota during the past 5 marketing years, it has been determined that a 1985–86 national marketing quota of 12.3 million pounds is necessary to make available production of 9.9 million pounds. Accordingly, a 1985–86 national marketing quota of 12.3 million pounds is hereby announced. It has been determined, however, that a national marketing quota in the amount of 12.3

million pounds would result in undue restriction of marketings during the 1985–86 marketing year in adjusting the total supply to the reserve supply level. Accordingly, such amount is hereby increased by 20 percent. Therefore, the amount of the 1985–86 national marketing quota for dark air-cured (types 35 & 36) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1985, is 14.8 million pounds.

(e) *National acreage allotment.* The national acreage marketing allotment is 8,194.91 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1985–86 marketing year is .85.

(g) *National reserve.* The national acreage reserve is 30.0 acres, of which 5.0 acres are made available for 1985 new farms and 25.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

For Virginia sun-cured tobacco for the marketing year beginning October 1, 1985:

(a) *Reserve supply level.* The reserve supply level for Virginia sun-cured tobacco is 2,000 thousand pounds.

(b) *Total supply.* The total supply of Virginia sun-cured tobacco for the marketing year beginning October 1, 1984 is 2,000 thousand pounds.

(c) *Carryover.* The estimated carryover of Virginia sun-cured tobacco for the marketing year beginning October 1, 1985, is 1,600 thousand pounds.

(d) *National marketing quota.* The amount of Virginia sun-cured tobacco which will make available during the marketing year beginning October 1, 1985, a supply equal to the reserve supply level of such tobacco is 400 thousand pounds. Because producers have been producing about 38 percent of the announced national marketing quota over the past 5 years, it has been determined that a national marketing quota of 1,040 thousand pounds is necessary to make available production of 400 thousand pounds. Accordingly, a national marketing quota of 1,040 thousand pounds is hereby announced. It has been determined, however, that a national marketing quota in the amount of 1,040 thousand pounds would result in undue restriction of marketings during the 1985–86 marketing year. Accordingly, such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for Virginia sun-cured (type 37) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1985, is 1,250 thousand pounds.

(e) *National acreage allotment.* The national acreage allotment is 1,075.73 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1985–86 marketing year is .90.

(g) *National reserve.* The national acreage reserve is 5.0 acres, of which 2.0 acres are made available for 1985 new farms, and 3.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

For cigar-binder (types 51–52) tobacco for the marketing year beginning October 1, 1985:

(a) *Reserve supply level.* The reserve supply level for cigar-binder (types 51–52) tobacco is 7.3 million pounds.

(b) *Total supply.* The total supply of cigar-binder (types 51–52) tobacco for the marketing year beginning October 1, 1984 is 8.6 million pounds.

(c) *Carryover.* The estimated carryover of cigar-binder (types 51–52) tobacco for the marketing year beginning October 1, 1985 is 5.6 million pounds.

(d) *National marketing quota.* The amount of cigar-binder (types 51–52) tobacco which will make available during the marketing year beginning October 1, 1985 a supply equal to the reserve supply level of such tobacco is 1.7 million pounds. Because producers have been producing about 56 percent of the approved national marketing quota over the past 4 years, it has been determined that a national marketing quota of 3.03 million pounds is necessary to make available production of 1.7 million pounds. Accordingly, a national marketing quota of 3.03 million pounds is hereby announced. It has been determined, however, that a national marketing quota in the amount of 3.03 million pounds would result in undue restriction of marketings during the 1985–86 marketing year in adjusting the total supply to the reserve supply level. Accordingly, such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for cigar-binder (types 51–52) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1985, is 3.64 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 2,027.86 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1985–86 marketing year is 1.0.

(g) *National reserve.* The national acreage reserve is 15.0 acres of which 5.0 acres are made available for 1985 new farms, and 10.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

For cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1985:

(a) *Reserve supply level.* The reserve supply level for cigar-filler and binder (types 42–44 & 53–55) tobacco is 75.6 million pounds.

(b) *Total supply.* The total supply of cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1984 is 82.1 million pounds.

(c) *Carryover.* The estimated carryover of cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1985 is 61.1 million pounds.

(d) *National marketing quota.* The amount of cigar-filler and binder (types 42–44, 53–55) tobacco which will make available during the marketing year beginning October 1, 1985, a supply equal to the reserve supply level of such tobacco is 14.5 million pounds. Because producers have been producing about 78 percent of the announced national marketing quota over the past 5 years, it has been determined that a national marketing quota of 18.6 million pounds is necessary to make available production of 14.5 million pounds. Accordingly, a national marketing quota of 18.6 million pounds is hereby announced. It has been determined, however, that a national marketing quota in the amount of 18.6 million pounds would result in indue restriction of marketings during the 1985–86 marketing year in adjusting the total supply to the reserve supply level. Accordingly, such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for cigar-filler and binder (types 42–44, 53–55) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1985, is 22.3 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 11,554.40 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1985–86 marketing year is 1.0.

(g) *National reserve.* The national acreage reserve is 50 acres, of which 40 acres are made available for 1985 new farms, and 10 acres are made available for making corrections and adjusting inequities in old farm allotments.

Authority: Secs. 301, 312, 313, 375, 52 Stat. 38, as amended, 46, as amended, 47, as amended, 66, as amended (7 U.S.C., 1301, 1312, 1313, 1375).

Signed at Washington, D.C., on June 5, 1985.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85-13555 Filed 6-7-85; 8:45 am]

BILLING CODE 3410-05-M

Federal Grain Inspection Service

Invitation To Serve on Federal Grain Inspection Service Advisory Committee

Section 20 of the United States Grain Standards Act (Act), as amended, directed the Secretary of Agriculture to establish an advisory committee to provide advice to the Administrator of the Federal Grain Inspection Service with respect to the efficient and economical implementation of the Act. The Federal Grain Inspection Service Advisory Committee (Advisory Committee) was established by the Secretary on Septemter 29, 1981. The Advisory Committee consists of 12 members appointed by the Secretary, representing the interests of all segments of the grain industry, and is governed by the provisions of the Federal Advisory Committee Act. Members of the Advisory Committee serve without compensation except that members, while away from their homes or regular places of business in the performance of service, are reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of Title 5, United States Code.

Alternate members of the Advisory Committee are needed to serve on behalf of members when they are temporarily unable to serve. In such situations, alternate members are subject to the same rules as are members. Persons interested in serving on this Advisory Committee as alternates, or wishing to submit names of individuals to be considered for appointment on the Advisory Committee as alternates, should contact, in writing, Kenneth A. Gilles, Administrator, FGIS, U.S. Department of Agriculture, Washington, D.C. 20250, not later than July 11, 1985, and furnish the following information: Name, home address, employer, occupation and title, statement of reason for nomination, and major source of income.

The final selection of alternate committee members will be made by the Secretary.

Dated: June 4, 1985.

K.A. Gilles,

Administrator.

[FR Doc. 85-13915 Filed 6-7-85; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Deschutes National Forest Grazing Advisory Board; Meeting

The Deschutes National Forest Grazing Advisory Board will meet at 9 a.m., June 26, 1985, at the Forest Supervisor's Office, 1645 Highway 20 East, Bend, Oregon 97701. The purpose of this meeting and field trip is:

1. Review Deschutes National Forest Range Management Program for 1985 and 1986.
2. Review Allotment Management Plans and Range Betterment Funds.
3. Open discussion of topics of interest to the Advisory Board.

This meeting will be open to the public. Persons who wish to attend should contact Will Griffin, 1645 Highway 20 East, Bend, Oregon 97701, telephone 388-8564.

David G. Mohla,

Forest Supervisor.

May 30, 1985.

[FR Doc. 85-13820 Filed 6-7-85; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Cayadutta Creek Watershed, NY; Intent To Prepare an Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Cayadutta Creek Watershed, Fulton and Montgomery Counties, New York.

FOR FURTHER INFORMATION CONTACT: Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone (315) 423-5521.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul A. Dodd, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for flood prevention. Alternatives under consideration to reach these objectives include, nonstructural measures, earth dams, and channel improvement.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Future meetings will be held to determine the scope of the evaluation of the proposed action. Further informaton on the proposed action may be obtained from Paul A. Dodd, State Conservationist, at the above address or telephone (315) 423-5521.

(Catalog of Federal Domestic Assistance program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: June 3, 1985.

Paul A. Dodd,

State Conservationist.

[FR Doc. 85-13910 Filed 6-7-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-503]

Certain Iron Construction Castings From Canada; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration/Import Administration/Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain iron construction castings (castings) from Canada are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that

it may determine whether imports of these products are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before June 27, 1985, and we will make ours on or before October 21, 1985.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Frank R. Crowe, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–4087.

SUPLEMENTARY INFORMATION:

The Petition

On May 13, 1985, we received a petition in proper form filed by the Municipal Castings Fair Trade Council, trade association representing domestic producers of castings and fifteen individually-named members of the association. Those producers are: Alhambra Foundry; Allegheny Foundry Company; Bingham & Taylor; Campbell Foundry Company; Charlotte Pipe & Foundry Co.; Deeter Foundry Co.; East Jordan Iron Works; Inc.; E.L. Le Baron Foundry Company; Municipal Castings Inc.; Neenah Foundry Company; Opelika Foundry Co., Inc.; Pinkerton Foundry Company; Tyler Pipe Corp.; U.S. Foundry and Manufacturing Co.; and Vulcan Foundry, Inc.; filing on behalf of the U.S. producers of castings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioners based the United States price on U.S. import statistics, U.S. resale transactions, direct import transactions, bid and price quotations, and price list prices.

Petitioners based foreign market value on selling prices from wholesalers to contractors.

Based on the comparison of these values, petitioners alleged dumping margins range from 17 to 503 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on castings and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether castings from Canada are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by October 21, 1985.

Scope of Investigation

The merchandise covered by the petition consists of certain iron construction castings, limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems; and valve, service and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable, and are currently classifiable under item number 657.09 of the *Tariff Schedules of the United States*.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 27, 1985, whether there is a reasonable indication that imports of castings from Canada are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 3, 1985.

[FR Doc. 85–13822 Filed 6–7–85; 8:45 am]

BILLING CODE 3510–DS–M

[C–351–408]

Iron Ore Pellets From Brazil; Suspension of Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of suspension of countervailing duty investigation.

SUMMARY: The Department of Commerce has decided to suspend the countervailing duty investigation involving iron ore pellets from Brazil. The basis for the suspension is an agreement to renounce all benefits provided by the government of Brazil which we find to constitute subsidies on exports of iron ore pellets to the United States.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen, Office of Investigations, or Peggy Clarke, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, Telephone: (202) 377–0167 or (202) 377–1487.

SUPPLEMENTARY INFORMATION: On December 20, 1984, we received a petition from the Cleveland-Cliffs Iron Company, the Oglebay Norton Company, Pickands Mather & Company, and the United Steelworkers of America, on behalf of the U.S. industry producing iron ore pellets. In compliance with the filing requirements of section 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Brazil of iron ore pellets receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended ("the Act").

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation and, on January 9, 1985, we initiated such an investigation (50 FR 2322). We stated that we expected to issued a preliminary determination by March 15, 1985.

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On February 4, 1985, the ITC determined that there is a reasonable indication that these imports materially injure or threaten material injury to a U.S. industry (50 FR 5286). We presented a questionnaire to the government of Brazil in Washington,

D.C., on January 25, 1985. On February 27, 1985, we received a response to the questionnaire. There is only one known producer and exporter in Brazil of iron ore pellets to the United States, Companhia Vale do Rio Doce (CVRD), for which we have received information from the government of Brazil.

We issued an affirmative preliminary determination on March 15, 1985 (50 FR 11527). We preliminarily determined that there was reason to believe or suspect that certain benefits which constitute subsidies within the meaning of the Act are being provided to CVRD. We preliminarily determined that the estimated net subsidies was 5.15 percent *ad valorem* for iron ore pellets. The programs preliminarily determined to bestow countervailable benefits were:

- Income Tax Exemption for Export Earnings
- Mineral Tax Incentives

We directed the U.S. Customs Service to suspend liquidation of all entries of the products under investigation which were entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or the posting of a bond on these products in an amount equal to the estimated net subsidy.

We conducted verification of the questionnaire response from the government and CVRD in Brazil from April 23 through April 30, 1985.

Our notice of preliminary determination gave interested parties an opportunity to submit oral and written views. We held a public hearing on April 17, 1985. Both petitioners and respondents submitted comments on this proceeding.

On April 29, 1985, we initialed a proposed suspension agreement with respect to iron ore pellets. Petitioners have had 30 days in which to submit comments regarding the proposed suspension agreement on iron ore pellets. Their comments have been received and taken into consideration.

Scope of Investigation

The product covered by this investigation is iron ore pellets. Iron ore pellets are defined, for purposes of this proceeding, as fine particles of iron oxide, hardened by heating and formed into balls of ⅜" to ⅝" for use in blast furnaces to obtain pig iron. Pellets for use in electric furnaces and containing not over three percent by weight of silica are excluded.

Changes From the Preliminary Determination

Import Duty Exemption

During verification, we found that Decree Law 1287 allows a 100 percent exemption from import duties and IPI tax on equipment, machinery, appliances or instruments, spare parts, etc., provided similar equipment is not produced in Brazil. This program is part of the mining industry incentives administered by the "Grupo Executivo de Industria de Mineracao" ["GEIMI"] of the Ministry of Mines and energy. Firms must have projects approved by GEIMI to qualify for the import duty exemption. Because this program is limited to certain industries we find it to be countervailable.

We verified that CVRD used this exemption for the importation of pelletizing and mining equipment during the review period.

Petitioners' Comments

Comment 1: Petitioners argue that the commitments undertaken in the Agreement are equally applicable to subsidiaries and affiliates controlled by CVRD, such as Doce Nave, CVRD's shipping subsidiary.

DOC Position: We agree that subsidiaries and affiliates that mine or produce iron ore pellets for export to the United States or that export iron ore pellets to the United States should be included, and we have so worded in the Agreement.

Comment 2: Petitioners argue that TSUSA number 601.2430 should also be included in the scope of the Agreement because indications are that iron ore pellets may be coming into the United States under that number as well as under TSUSA number 601.2450.

DOC Position: To avoid the problem of basket TSUSA numbers and misclassification, we have made it clear that it is the written description, not the TSUSA number, that determines the scope of the Agreement.

Comment 3: Petitioners argue that the renunciation of the income tax exemption allocated to exports of iron ore to the United States should apply to any tax return filed in "1985 or thereafter" rather than "on any tax return filed on or after the effective date of this agreement," because present Department methodology values income tax exclusions by allocating the benefits earned by 1984 exports to 1985, the year in which the tax savings are construed as being "received".

DOC Position: We agree and have so worded the Agreement.

Comment 4: Petitioners argue that language should be added to specifically preclude the use of any program which the Department finds is a subsidy in any final determination and the use of any programs which the Court of International Trade, after any appeal, orders to be investigated and which are found to constitute subsidies. Language should also be added which would specifically include subsidies which may be alleged by Petitioners in the future, but have not yet been investigated.

DOC Position: We agree and have so worded the Agreement.

Comment 5: Petitioners argue that the decision whether the renunciation obligation continues to exist on those programs that have been found not countervailable in the notice of suspension of investigation, the final determination, or the final results of an administrative review under section 751, should be made by the Department; therefore, language in the suspension agreement should be written to reflect this position.

DOC Position: We disagree. Once a program has been found to be not countervailable, then there is no further requirement on the part of the company to continue renunciation of the benefits under that program.

Comment 6: Petitioners argue that CVRD has to supply any information, "including complete auditor's reports containing a full reconciliation between financial and taxable income."

DOC Position: We agree that CVRD should provide any available reconciliation between financial and taxable income.

Comment 7: Petitioners argue that all effective dates should be from March 31, 1985, rather than June 30, 1985, because then there will be no gaps between the review period and the monitoring periods for which information does not exist.

DOC Position: We disagree. Since the Suspension Agreement is not signed until May 29, 1985, CVRD would technically be in violation if all dates go back to March 31.

Respondents' Comments

Comment 1: The Government of Brazil suggests that the Brazilian government's responsibilites for monitoring the suspension agreement would be better addressed in a government-to-government letter, rather than in the body of the Agreement. U.S. countervailing duty law does not require the Government of Brazil to be a direct party to the Agreement. There is precedent for such a letter (see, Notice of Suspension of Countervailing Duty Investigation of Certain Textile Mill Products and Apparel from Columbia, 50 FR 9863). This would not change the obligations of the government.

DOC Position: Although this has been done in the past, we prefer to include

the government as a direct party to the Agreement.

Comment 2: Respondents argue that CVRD should only have to renounce the income tax exemption for exports of iron ore pellets to the United States. They state that renouncing the benefit for U.S. sales only is consistent with past department practice and refer us to the South African steel suspension agreements. Such a renunciation would reduce the benefit by the same amount as a countervailing duty imposed on U.S. imports would offset it. Further, they argue that the program is segregable for U.S. sales, i.e., since CVRD can prove exactly which exports generate the exemption, it would be possible to segregate U.S. sales and renounce solely on them. Since U.S. sales would no longer be generating the exemption, they also would no longer be receiving the benefit.

Finally, respondents argue that the Department's concern over different levels of profitability for sales to different markets is irrelevant. The profit to which the exemption is applied is based on the firm's overall profitability not on its profits from any specific transactions. Under the methodology used to calculate the exemption, the level of profits on CVRD's exports to the United States makes absolutely no difference. By eliminating exports to the United States from the numerator, the amount of benefits derived by CVRD is reduced by the amount generated by such sales. No adjustment to the profit, therefore, is needed to fully offset the benefit.

DOC Position: The Suspension Agreement, as signed, required CVRD to renounce the income tax exemption only on iron ore pellet exports to the United States.

Comment 3: Respondents argue that the I.U.M. is an indirect tax. Therefore, any reduction in the rate charged on exports is not a subsidy. Therefore, this program should not be included in the Suspension Agreement.

DOC Position: In our preliminary affirmative determination, we preliminarily found this program to confer a subsidy. Therefore, it is appropriate to include this program in the Suspension Agreement. Should it be found not to provide a subsidy, either in a continuation of this investigation or in any section 751 administrative review which may occur, then respondents will no longer be required to renounce use of this program.

Comment 4: Respondents stated that Section II.d. of the Agreement may be difficult to implement as worded because it requires CVRD to renounce any benefits found countervailable in any investigation or section 751 administrative review. Respondents believe the Department should notify CVRD if it should renounce benefits found countervailable in other proceedings.

DOC Position: The Department is not persuaded that it should accept the responsibility of notifying CVRD of programs found to be countervailable in any proceeding. CVRD is responsible for its use of countervailable benefits that are applicable to it.

Comment 5: Respondents argue that notification regarding plans to build a pelletizing facility at Carajas should occur within 30 days of deciding to build such a facility, not within 30 days of consideration of buildings such a facility. Any person might "consider" it but, they argue, unless CVRD actually decides to build a plant, such considerations are irrelevant. There is an approximately two-year lag-time between deciding to build such a facility and completing it. This would give the Department sufficient time to decide its position after notification.

DOC Position: We agree and have so worded the Agreement.

Suspension of Investigation

The Department has consulted with the petitioners and has considered their comments submitted with respect to the proposed Suspension Agreement. We have determined that the agreement will eliminate completely the amount of the net bounty or grant with respect to the subject merchandise exported directly or indirectly to the United States, that the Agreement can be monitored effectively and that the Agreement is in the public interest. Therefore, we find that the criteria for suspension of an investigation pursuant to section 704 of the Act have been met. The terms and conditions of the Agreement, signed May 29, 1985, are set forth in Annex 1 to this notice.

Pursuant to section 704(f)(2)(A) of the Act, the suspension of liquidation of all entries, entered or withdrawn from warehouse, for consumption, of iron ore pellets from Brazil effective March 22, 1985, as directed in our notice of "Preliminary Affirmative Countervailing Duty Determination; Iron Ore Pellets from Brazil," 50 FR 11527, is hereby terminated. Any cash deposits on entries of iron ore pellets from Brazil pursuant to that preliminary affirmative determination shall be refunded and any bonds shall be released.

Notwithstanding the suspension agreement, the Department will continue the investigation, if we receive such a request in accordance with section 704(g) of the Act within 20 days after the date of publication of this notice.

This notice is published pursuant to section 704(f)(1)(A) of the Act (19 U.S.C. 1671c(f)(1)(A)).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

Suspension Agreement

Pursuant to the provisions of section 704 of the Tariff Act of 1930 ("the Act") and § 355.31 of the Department of Commerce Regulations, the Department of Commerce ("the Department"), the Government of Brazil, and Companhia Vale do Rio Doce (including its subsidiaries and affiliated companies which mine or produce iron ore pellets for export to the U.S. or which export iron ore pellets to the U.S.) ("CVRD"), the only current producer and exporter to the U.S. of certain iron ore pellets in Brazil, as defined in paragraph I below, enter into the following Suspension Agreement (the "Agreement"). In consideration of this Agreement, the Government of Brazil agrees to take such steps as are necessary to ensure that the renunciation of subsidies by CVRD is effectively implemented and monitored, and that the Department is informed of any other companies that begin exporting to the U.S. certain iron ore pellets as defined by paragraph I below. On the basis of the foregoing, the Department shall suspend its countervailing duty investigation initiated on Janaury 16, 1985 (50 FR 2322) with respect to iron ore pellets from Brazil subject to the terms and conditions set forth below.

I. Scope of the Agreement

The Agreement applies to certain iron ore pellets (hereinafter "iron ore pellets"), defined for the purposes of this Agreement, as fine particles of iron oxide, hardened by heating and formed into balls of ⅜ inch to ⅝ inch for use in blast furnaces to obtain pig iron, and exported directly or indirectly from Brazil to the United States, regardless of the TSUSA item under which they are entered.

II. Basis of the Agreement

CVRD, accounting for one hundred (100) percent of the total exports of iron ore pellets from Brazil to the United States, agrees as follows:

a. It will not claim any exemption from income tax or any type of countervailable benefit whatsoever under Decree-Laws No. 1158, No 1721, or No. 1240 of that portion of profits allocated under the relevant Brazilian law to exports of iron ore pellets from

Brazil to the United States on any tax return filed in 1985 or thereafter.

b. It will pay the tax on minerals (Imposto Unico sobre Minerais, or I.U.M.) under Decree-Law No. 1038, as amended by Decree-Law No. 1172 and Decree No. 66694, on or with respect to iron ore pellets exported, directly or indirectly, from Brazil to the United States at the same tax rate which is imposed on iron ore pellets sold domestically.

c. It agrees not to use any exemptions under Decree Laws No. 1287, No. 1137, No. 1428, or Decree No. 77065 from import duties or IPI taxes on imported equipment of pelletizing and iron ore mining operations. This does not include equipment exclusively for use in the Carajas project.

d. It agrees that it will not apply for, or receive, directly or indirectly, countervailable benefits with respect to iron ore pellets exported, directly or indirectly, from Brazil to the United States which are countervailable under the Act. Countervailable benefits with respect to exported iron ore pellets are defined as any subsidy which has been found countervailable in any investigation or review under section 751 of the Act; or which is subsequently determined by the Department in any final determination in this investigation, in any re-determination of the amount of the net subsidy published pursuant to a notice of a decision of the United States Court of International Trade published pursuant to section 516A(c)(1) of the Act, or in an administrative review of this Agreement under section 751 of the Act to constitute countervailable benefits under the Act to the subject product. This would include countervailable benefits which may apply to other products or exports to other destinations that cannot be segregated as applying to such other products or exports. It further agrees that it will not apply for or receive, directly or indirectly, any new or equivalent benefits for the subject merchandise as a substitute for any benefit renounced by the agreement.

e. It shall notify the Department in writing at least thirty days prior to applying for or accepting, directly or indirectly, any new benefit, which has been found to be countervailable in this or other proceedings, on iron ore pellets exported, directly or indirectly, from Brazil to the United States, including countervailable benefits which may apply to other products or exports to other destinations that cannot be segregated as applying solely to such other products or exports.

f. If any program under which subsidies have been received in the past, and which is included in this Agreement, is found in this proceeding not to constitute a countervailable benefit under the Act in the notice of suspension of investigation, the final determination, or the final results of an administrative review of this Agreement under section 751 of the Act, then the renunciation of the subsidies under that program will no longer be required.

g. It agrees that it will not build any pelletizing facilities at the Carajas project or for pelletizing Carajas ore until 1995, and that if it builds such facilities thereafter, it will not ship pellets to the U.S. until after a countervailing duty investigation is completed. It further agrees to notify the Department in writing no later than 30 days after deciding to build any pelletizing facilities at the Carajas project or for pelletizing Carajas ore.

III. Monitoring of the Agreement

1. CVRD agrees to supply any information, including any available reconciliation between financial and taxable income, and documentation which the Department deems necessary to demonstrate that there is full compliance with the terms of this Agreement, including the value of exports of iron ore pellets by CVRD to the United States, within 45 days from the end of each calendar quarter, beginning with the quarter ending June 30, 1985. CFRD also agrees to provide copies of all documents, including source documents such as invoices and ledgers as well as all tax documents and calculations, used in computing the income tax exemption for export earnings; all such documents will be available to counsel for Petitioners under protective order.

2. CVRD will notify the Department if it:

a. Transships iron ore pellets through third countries to the United States;

b. Alters its position with respect to any terms of the Agreement; or

c. Applies for, or receives, directly or indirectly, the countervailable benefits of the programs described in Section II for the production or export of iron ore pellets exported, directly or indirectly, from Brazil to the United States.

3. The Department will request information and may perform verifications periodically pursuant to administrative reviews conducted under section 751 of the Act, in addition to exercising its rights under paragraphs III.1 and 2, above.

4. CVRD agrees to permit such verification and data collection as deemed necessary by the Department in order to monitor this Agreement.

5. CVRD agrees to provide to the Department a periodic certification that it continues to be in compliance with the terms of the Agreement. A certification will be provided within 45 days from the end of each calendar quarter beginning with the quarter ending June 30, 1985.

IV. General Provisions

1. In entering into this Agreement, CVRD does not admit that any of the programs investigated or included in this Agreement constitute subsidies within the meaning of the Act or the GATT Subsidies Code.

2. The provisions of section 704(i) shall apply if:

a. CVRD withdraws from this Agreement; or

b. The Department determines that the Agreement is being or has been violated or no longer meets the requirement of section 704 of the Act.

3. Additionally, should exports to the United States by CVRD of iron ore pellets account for less than 85 percent of the iron ore pellets imported, directly or indirectly, into the United States from Brazil, the Department may attempt to negotiate an agreement with additional producers or exporters or may terminate this Agreement and re-open the investigation or issue a countervailing duty order as appropriate under § 355.32 of the Commerce Regulations. If re-opened, the investigation will be resumed for all producers and exporters of iron ore pellets as if the affirmative preliminary determination were made on the date that the Department terminates this Agreement.

4. If, pursuant to section 704(g) of the Act, the investigation is continued after the notice of suspension of investigation, the application of this Agreement shall be consistent with the final determination issued in the continued investigation, and all programs found to constitute countervailable benefits, whether export or domestic, shall be specifically renounced in a manner similar to Subparagraphs II.a., b, and c.

V. Undertaking by the Government of Brazil

1. In consideration of the foregoing Agreement between CVRD and the Department of Commerce, the Government of Brazil agrees not to provide any countervailable benefits, directly or indirectly, for or in respect of iron ore pellets exported to the United States, and agrees to take such steps as are necessary to ensure that the renunciation of subsidies in this Agreement by CVRD is effectively implemented and monitored, including:

a. Reporting any exemption from income tax or any other type of countervailable benefit whatsoever under Decree-Laws No. 1158, No. 1721, or No. 1240 on that portion of profits allocated under the relevant Brazilian law to exports of iron ore pellets from Brazil to the United States;

b. Ensuring that CVRD will comply with provision IIb of this Agreement, that CVRD will pay the tax on minerals (Imposto Unico sobre Minerais, or I.U.M.) under Decree-Law No. 1038, as amended by Decree-Law No. 1172 and Decree No. 66694, on or with respect to iron ore pellets exported, directly or indirectly, from Brazil to the United States at the same tax rate which is imposed on iron ore pellets sold domestically.

c. Notifying the relevant authorities of the Government of Brazil of the terms of this Agreement in order to ensure action by those agencies consistent with the terms of this paragraph;

d. Supplying any information and documentation that the Department deems necessary to demonstrate full compliance by CVRD with the terms of this Agreement;

e. Permitting such verification and data collection as deemed necessary by the Department in order to monitor this Agreement;

f. Notifying the Department within 45 days from the end of each calendar quarter, beginning with the quarter ending June 30, 1985, if producers or exporters of iron ore pellets other than CVRD export to the United States and whether such producers and exporters have agreed to undertake the obligations specified under this agreement as applying to CVRD;

g. Notifying the Department if it becomes aware that CVRD is transshipping iron ore pellets through third countries to the United States;

h. Notifying the Department if it alters its position with respect to any of the terms of this Agreement;

i. Notifying the Department if CVRD applies for, or receives, directly or indirectly, the benefits of the programs described in paragraph II (a, b, and c), or any other programs found to be countervailable in the final determination, or any subsequent review under section 751 of the Act, on exports of iron ore pellets, directly or indirectly, from Brazil to the United States; and

j. Notifying the Department if CVRD becomes eligible for, applies for, or receives, directly or indirectly, any new or substitute subsidies on iron ore pellets exported, directly or indirectly, from Brazil to the United States in contravention of paragraph II(d) of the Agreement.

2. The Government of Brazil agrees to provide to the Department within 45 days of the end of each calendar quarter, beginning with the quarter ending June 30, 1985, all relevant information deemed by the Department to be necessary to maintain this Agreement. The information shall include, but not be limited to:

a. A certification (provided after consultation with each agency responsible for administering the programs in Section II) that CVRD has not applied for or received, directly or indirectly, any countervailable benefits described in Section II on iron ore pellets exported, directly or indirectly, from Brazil to the United States;

b. A certification of the total value of iron ore pellets exported, directly or indirectly, from Brazil to the United States and to all markets both in the aggregate and by producer/exporter; and

c. A certification that CVRD continues to be in full compliance with this Agreement.

3. The Government of Brazil's undertaking under this section is not an admission that any of the programs investigated or included in the Agreement constitute subsidies under the Act or the Subsidies Code.

4. The Government of Brazil recognizes that its undertaking is essential to the continuation of this Agreement.

VI. Effective Date

The effective date of this Agreement is the date of publication in the **Federal Register**. The provisions of paragraphs II (a–g) apply with respect to iron ore pellets exported on or after the effective date.

Signed on this 29th day of May, 1985, for the Government of Brazil.

J. Art. Medeiros,

Chargé d'Affaires of Brazil.

Signed on this 29th day of May, 1985, for Companhia Vale do Rio Doce.

Peter L. Briger,

Counsel for CVRD.

I have determined, pursuant to section 704(b) of the Act, that the provisions of Section II completely eliminate the subsidies that the Government of Brazil is providing with respect to certain iron ore pellets exported, directly or indirectly, from Brazil to the United States. Furthermore, I have determined that the suspension of the investigation is in the public interest, that the provisions of Sections III and V ensure that this Agreement can be monitored effectively, and that this Agreement meets the requirements of section 704(d) of the Act.

United States Department of Commerce,

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–13796 Filed 6–7–85; 8:45 am]

BILLING CODE 3510-DS-M

[C–351–504]

Initiation of Countervailing Duty Investigation; Certain Iron Construction Castings From Brazil

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of initiation of countervailing duty investigation.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether the manufacturers, producers, or exporters in Brazil of certain iron construction castings, as described in the "Scope of the Investigation" section below, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) so that it may determine whether imports of the subject merchandise from Brazil materially injure, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before June 27, 1985. If our investigation proceeds normally, we will make our preliminary determination on or before August 6, 1985.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230. Telephone (202) 377–1785.

SUPPLEMENTARY INFORMATION:

Petition

On May 13, 1985, we received a petition in proper form from the Municipal Castings Fair Trade Council, a trade association representing domestic producers of certain iron construction castings and fifteen individual-named members of the association. Those producers are: Alhambra Foundry, Inc.; Allegheny Foundry Co.; Bingham & Taylor; Campbell Foundry Co.; Charlotte Pipe &

Foundry Co.; Deeter Foundry Co.; East Jordan Iron Works, Inc.; E.L. Le Baron Foundry Co.; Municipal Castings, Inc.; Neenah Foundry Co.; Opelika Foundry Co.; Inc.; Pinkerton Foundry Co.; Tyler Pipe Corp.; U.S. Foundry & Manufacturing Co.; and Vulcan Foundry, Inc., filing on behalf of the U.S. producers of iron construction castings. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Brazil of certain iron construction castings receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act; therefore Title VII of the Act applies to this investigation and an injury determination is required.

Initiation of Investigation

Under section 702(c) of the Act, within 20 days after a petition is filed, we must determine whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on certain iron construction castings from Brazil and we have found that the petition meets those requirements. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Brazil of certain iron construction castings, as described in the "Scope of the Investigation" section of this notice, receive benefits which constitute subsidies. If our investigation proceeds normally, we will make our preliminary determination by August 6, 1985.

Scope of Investigation

The merchandise covered by the petition consists of certain iron construction castings, limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems; and valve, service and meter boxes which are placed below ground to encase water, gas or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable, and are currently classifiable under item number 657.09 of the *Tariff Schedules of the United States* (TSUS).

Allegations of Subsidies

The petition alleges that manufacturers, producers, or exporters in Brazil of certain iron construction castings receive benefits which constitute subsidies. We are initiating an investigation on the following allegations:

- IPI Export Credit Premium;
- Income Tax Exemption on Export Earnings (Decree Laws 1158 and 1721);
- BEFIEX Program (Decree Laws 77.065 and 72.1219)
- CIEX (Decree Law 1428);
- Export Financing under CIC–CREGE 14–11 Circular;
- Working Capital for Export Financing (Resolutions 674, 882, and 950);
- Preferential Financing for Storage of Export Merchandise (Resolution 330);
- Resolution 68 Financing;
- PROEX Export Production Credit;
- Incentives for Trading Companies (Resolutions 643 and 883)
- CDI Program (Decree Laws 737 and 738 and Resolution 22)
- ADTEN Program of FINEP;
- Guarantees for Long-Term Foreign Currency Denominated Loans;
- BNDES Financing;
- Accelerated Depreciation; and
- State or Regional Development Financing.

Notification of ITC

Section 702(d) of the Act requires us to notify the U.S. International Trade Commission (ITC) of this action, and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-confidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 27, 1985, whether there is a reasonable indication that imports of certain iron construction castings from Brazil materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory procedure.

Dated: June 3, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–13918 Filed 6–7–85; 8:45 am]

BILLING CODE 3510-DS-M

[C–351–406]

Preliminary Affirmative Countervailing Duty Determination; Certain Agricultural Tillage Tools From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of certain agricultural tillage tools. The estimated net subsidy is 4.33 percent *ad valorem*. In addition, we have determined that "critical circumstances" exist in this case.

We have notified the United States International Trade Commission (ITC) of our determinations. As a result of our preliminary determination that critical circumstances exist, the suspension of liquidation applies to all unliquidated entries of certain agricultural tillage tools entered, or withdrawn from warehouse, for consumption, on or after the date which is 90 days before publication of this notice. We have also directed the U.S. Customs Service to require a cash deposit or bond for each such entry in an amount equal to the estimated net subsidy as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by August 19, 1985.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–5050 or 377–1785.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act),

are being provided to manufacturers, producers, or exporters in Brazil of certain agricultural tillage tools. For purposes of this investigation, the following programs are found to confer subsidies to tillage tool manufacturers:

- Preferential Working-Capital Financing for Exports;
- Export Financing Under the CIC–CREGE 14–11 Circular;
- Income Tax Exemption for Export Earnings; and
- Subsidies to Upstream Suppliers of Steel Inputs:

—Government Provision of Equity Capital to USIMINAS
—IPI Tax Rebates for Capital Investment
—Exemption of IPI Tax and Customs Duties on Imported Equipment (CDI)

We determine the estimated net subsidy to be 4.33 percent *ad valorem*.

Case History

On September 28, 1984, we received a petition filed by Ingersoll Products Corporation of Chicago, Ill., Empire Plow Company of Cleveland, Ohio, and Nichols Tillage Tools, Inc. of Sterling, Colo. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Brazil of certain agricultural tillage tools receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure or threaten material injury to a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on October 18, 1984, we initiated such an investigation (49 FR 42971). We stated that we expected to issue a preliminary determination by December 22, 1984.

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On November 12, 1984, the ITC preliminarily determined that there is a reasonable indication that these imports materially injure or threaten material injury to a U.S. industry (49 FR 37856).

We presented a questionnaire concerning the allegations to the government of Brazil in Washington, D.C. on October 29, 1984. On December 6, 1984, we received a response to the questionnaire.

On December 14, 1985, we received information from petitioners which established a reasonable basis to believe or suspect that the products under investigation benefited from upstream subsidies in the form of subsidized steel inputs. We therefore extended the due date for a preliminary determination to June 4, 1985 (50 FR 300). On January 25, 1985, we issued an upstream subsidy questionnaire and received a response on February 25, 1985. On April 17, 1985, we issued a supplementary upstream subsidy questionnaire and received responses on May 17, 22, and 28, 1985.

Scope of the Investigation

The products covered by this investigation are certain agricultural tillage tools, which are defined for purposes of this proceeding as ground-engaging metal tools for tillage and cultivating equipment such as cultivators, discers, and harrows. Tillage tools include round-shaped tools such as colter, furrow-opener blaues, etc., and tools that are not round-shaped (rectangular, triangular, and other odd shapes) such as points, chisels, sweeps, shovels, knives, furrowers, tines, drills, lister bottoms, rotary tiller blades, bed-shaping tools as well as plowshares, plowshins, moldboards, etc. Tillage tools are currently provided for in items 666.0015, 666.0020, 666.0050, 666.0060, 666.0065, and 666.0075 of the *Tariff Schedules of the United States, Annotated* (TSUSA).

There are three known producers and exporters in Brazil of certain agricultural tillage tools to the United States for which we have received information from the government of Brazil. These are Baldan Implementos Agricolas S.A. (Baldan), Marchesan Implementos e Maquinas Agricolas "TATU" S.A. (Marchesan), and Companhia Semeato de Aços (Semeato). In addition, we have identified Companhia Aços Especiais Itabira S.A. (ACESITA) and Usinas Siderurgicas de Minas Gerais S.A. (USIMINAS) as the upstream suppliers of steel inputs to the tillage tool manufacturers mentioned above. For purposes of this preliminary determination, the period for which we are measuring subsidization ("the review period") is the calendar year 1983.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to rigorous verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

In its response, the government of Brazil provided data for the applicable period, including financial statements and debt information for Baldan, Marchesan, and Semeato.

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Determined To Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of certain agricultural tillage tools under the following programs:

A. Preferential Working-Capital Financing for Exports

The Carteira do Comércio Exterior (Foreign Trade Department, or CACEX) of the Banco do Brasil administers a program of short-term working-capital financing for the purchase of inputs. During the review period, these working-capital loans were provided under Resolution 674 of the Banco Central do Brasil. On January 1, 1984, Resolution 674 was superseded by Resolution 882, which was itself substantially amended by Resolution 950 on August 21, 1984.

Eligibility for this type of financing is determined on the basis of past export performance or of an acceptable export plan. The amount of available financing is calculated by making a series of adjustments to the dollar value of exports. During the review period, the maximum level of eligibility for such financing was 30 percent of the value of exports, and then 22 percent; at present, financing is capped at 20 percent of the value of exports.

Following approval by CACEX of their applications, participants in the program receive certificates representing portions of the total dollar amount for which they are eligible The

certificates may be presented to banks in return for cruzeiros at the exchange rate in effect on the date of presentation.

Use of a certificate establishes a loan obligation with a term of up to one year (360 days). Certificates must be used within 12 months of the date of issue and loans incurred as a result of their use must be repaid within 18 months of that date.

The interest rate ceiling was raised from 40 to 60 percent on loans obtained under Resolution 674 on June 11, 1983. On January 1, 1984, Resolution 882 changed the interest rate to full monetary correction plus 3 percent, with the interest and principal payable in one lump sum at the expiration of the loan. On August 21, 1984, Resolution 950 made this working-capital financing available from commercial banks, with interest calculated at time of repayment. Under Resolution 950, the Banco do Brasil pays the lending institution an equalization fee of up to 10 percent of the interest (after monetary correction). Therefore, if the interest rate charged to the borrower is less than full monetary correction plus 10 percent, the Banco do Brasil pays the lending bank the difference, up to 10 percent.

Information received last month from U.S. Government sources in Brazil and since placed on the public record indicates that the equalization fee was increased in May 1985 to up to 15 percent of the interest.

Since receipt of working-capital financing is contingent on export performance, and provides funds to participants at interest rates lower than those available from commercial sources, we preliminarily determine that this program confers an export subsidy.

Consistent with our stated policy to take into account programwide changes that occur after the review period and before our preliminary determination, we calculated the benefit by multiplying the current maximum level of eligibility (20 percent) by the equalization fee plus the Imposto sôbre Operaçoes Financeiras (Tax on Financial Operations, or IOF). We allocated the benefit over the total value of all exports by the respondents and calculated an estimated net subsidy of 3.30 percent *ad valorem*.

B. Export Financing Under the CIC–CREGE 14–11 Circular

Under its CIC–CREGE 14–11 circular ("14–11"), the Banco do Brasil provides 180- and 360-day cruzeiro loans for export financing, on the condition that companies applying for these loans negotiate fixed-level exchange contracts with the bank. Companies obtaining a 360-day loan must negotiate exchange contracts with the bank in an amount equal to twice the value of the loan. Companies obtaining a 180-day loan must negotiate an exchange contract equal to the amount of the loan.

In addition to requiring exchange contracts, the Banco do Brasil requires that these loans be fully secured by collateral in the form of tangible property. The bank normally requires that the value of collateral equal at least 130 percent of the amount of the loan. The bank also charges a commission on all such loans.

All exporters of manufactured products with production cycles of less than 180 days may apply for these loans. The maximum level of eligibility is based on the value of the applicant's exports in the previous year. Companies receiving the working-capital export financing described in section I.A of this notice have a maximum eligibility of 10 percent. All others have a maximum eligibility of 15 percent.

Although this program does in certain aspects appear to operate on a commercial basis, the government of Brazil did not supply sufficient data, either in previous cases or in its current response, to support its assertion that commissions, exchange contract requirements and collateral requirements serve to raise the effective rates on these loans to a level of comparability with those on short-term loans from other commercial sources. Without sufficient information with which to quantify these additional charges, we must compare unadjusted nominal rates on 14–11 loans with our commercial benchmark, *i.e.*, the nominal discount rate of accounts receivable, as the best information available. This comparison shows that the rate on 14–11 loans is below the benchmark. Therefore, we preliminarily determine that this program confers an export subsidy.

Baldan obtained a loan under this program. To calculate the benefit, we compared the interest rates charged with the appropriate benchmark and applied the difference to the principal amounts. We then allocated the benefit over the total value of all exports by the respondents, which resulted in an estimated net subsidy of 0.25 percent *ad valorem*.

C. Income Tax Exemption for Export Earnings

Under Decree-Laws 1158 and 1721, exporters of agricultural tillage tools are eligible for an exemption from income tax on a portion of profits attributable to export revenue. Because this exemption is tied to exports and is not available for domestic sales, we preliminarily determine that this exemption confers an export subsidy. Baldan and Marchesan both took an exemption from income tax payable in 1983 on a portion of export profits earned in 1982. We multiplied that portion by the nominal corporate tax rate, and allocated the benefit over the total value of all exports by the respondents to calculate an estimated net subsidy of 0.07 percent *ad valorem*.

D. Subsidies to Upstream Suppliers of Steel Inputs

Under section 771A(a) of the Act, we must apply the following tests in order to determine whether "upstream subsidies" are being paid or bestowed upon the products under investigation:

> The term "upstream subsidy" means any subsidy described in section 771(5)(B) (1), (ii), or (iii) by the government of a country that—
>
> (1) Is paid or bestowed by that government with respect to a product (hereafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;
>
> (2) In the judgment of the administering authority bestows a competitive benefit on the merchandise; and
>
> (3) Has a significant effect on the cost of manufacturing or producing the merchandise.

Respondents assert that section 771A also requires an analysis of whether the upstream recipient of subsidies limits benefits to specific downstream users or makes them available to all of its customers. We disagree. Nothing in the statute or legislative history supports this contention.

1. *Domestic Subsidies.* As the first step of this test, we preliminarily determine that domestic subsidies are being provided to ACESITA and USIMINAS, suppliers of hot-rolled carbon steel plate in coil and hot-rolled carbon steel sheet in coil to the tillage tool manufacturers, under the following programs:

a. *Government Provision of Equity Capital to USIMINAS.*—Siderurgia Brasileira S.A. (SIDERBRAS) is a government-controlled corporation under the jurisdiction of the Ministry of Industry and Commerce. Pursuant to Decree Law No. 6159 of December 6, 1974, SIDERBRAS became the holding company for the federally owned steel corporations. SIDERBRAS is a majority shareholder of nine Brazilian steel producers and a minority shareholder of one small Brazilian steel producer.

During 1979–1983, SIDERBRAS made equity infusions into USIMINAS. We have consistently held that government provision of, or assistance in obtaining, capital does not *per se* confer a subsidy.

Government equity purchases or financial backing bestow a countervailable benefit only when provided on terms inconsistent with commercial considerations.

For purposes of this preliminary determination, we reviewed the company's financial data and all other factors on the record relevant to a determination of inconsistency with commercial considerations. In order to determine whether a company was a reasonable equity investment (a * condition we have termed "equityworthiness"), we focused on the rate of return on equity and long-term prospects for the company in question for the period 1979 through 1983. We examined financial ratios, profits and losses, and other factors, such as market demand projections and current operating results, to evaluate a company's current and future ability to earn a reasonable rate of return on equity investments.

Based on these factors, as applied to information on the record, we found USIMINAS to be equityworthy between 1977 and 1979 and unequityworthy from 1980 through 1982 in the case of *Certain Carbon Steel Products from Brazil* (49 FR 17988). In addition, we now find USIMINAS to be unequityworthy in 1983. Accordingly, we preliminary determine that the action of the government in taking an equity position in the company in those years is inconsistent with commercial considerations and confers a subsidy.

To calculate the benefit, we compared the company's rate of return on equity with the average rate of return in Brazil for the year in question. We then applied the "rate of return shortfall" methodology to all purchases of equity that we consider to be inconsistent with commercial considerations. For purposes of this preliminary determination, we used the nationwide rate of return on equity in Brazil as published by *Business Latin America*. We calculated an estimated net subsidy of 8.02 percent to USIMINAS.

b. *IPI Tax Rebates for Capital Investment.*—Decree-Law 1547, enacted in April 1977, provides funding for capital investment in approved expansion projects in the Brazilian steel industry through a rebate of the Imposto sôbre Produtos Industrializados (IPI), which is a value-added tax imposed on domestic sales. The IPI tax is an indirect tax and, as such, is passed on to the consumer. A steel company collects this tax on sales as an agent for the government, and does not pay the tax itself. Decree-Law 1547 is a mechanism by which a steel company is permitted to collect funds due the government and then receive a 95 percent tax rebate. The program does not involve the rebate of payments made from the company's own funds.

Originally, the IPI tax applied to all domestic sales transactions. In 1979, the value-added tax was eliminated except for producers in 14 industry sectors, including tobacco, automobiles, spirits and alcohol, ceramics, rubber, and steel. The tax rate is different for each of the specified industry sectors; for steel products, the value-added tax is 5 percent.

A Brazilian steel company may deposit 95 percent of the net IPI tax due in a special account with the Banco do Brasil. The amounts deposited are to be applied to steel expansion projects. When rebated to the firms, they constitute reserves that must eventually be converted into subscribed capital.

Under the terms of Resolution 68–77 issued by the Conselho de Nao-Ferrosos e Siderurgia (CONSIDER), which implements Decree-Law 1547, IPI tax rebates are payable only on basic steel products and certain fabricated steel products such as seamless steel pipes. ACESITA and USIMINAS both received IPI tax rebates as manufacturers of basic steel products. Because these rebates are provided based on industry-specific criteria, we preliminarily determine that IPI tax rebates confer a subsidy.

In order to calculate the benefit attributable to this program, we treated the total IPI rebates received in each year as a grant. We allocated the rebates received from 1977 through 1983 over 15 years, which is the average useful life of capital assets in the steel industry. In the case of ACESITA, we used as our discount rate the short-term commercial benchmark for Brazil because we did not have a company-specific or national average cost of long-term debt. In the case of USIMINAS, we found the company to have been uncreditworthy from 1980 onwards. Therefore, we used as our discount rate the average annual maximum real cost of trade bill discounts as published by *Analise/Business Trends*, plus a risk premium. We calculated an estimated net subsidy of 2.49 percent for ACESITA and 0.45 percent for USIMINAS.

c. *Exemption of IPI Tax and Customs Duties on Imported Equipment (CDI).*—Under Decree-Law 1428, the Conselho do Desenvolvimento Industrial (Industrial Development Council, or CDI) provides for the exemption of 60 to 100 percent of the customs duties and 80 to 100 percent of the IPI tax on certain imported machinery for projects approved by the CDI. The recipient must demonstrate that the machinery or equipment for which an exemption is sought was not available from a Brazilian producer. The investment project must be deemed to be feasible and the recipient must demonstrate that there is a need for added capacity in Brazil.

Decree-Law 1726 repealed this program in 1979. Subnsequently, no new projects were eligible for these benefits. However, companies whose projects were approved prior to the repeal still receive these benefits pending completion of the project.

Only USIMINAS received benefits under this program during the review period. In our Final Affirmative Countervailing Duty Determination on *Certain Carbon Steel Products from Brazil* (49 FR 17968), we found that receipt of this benefit is limited to projects in 14 industries approved by the government of Brazil. Based on the record of those and earlier Brazilian countervailing duty investigations, we have concluded that these benefits are limited to specific enterprises or industries. Accordingly, we preliminarily determine the CDI program confers a subsidy on USIMINAS. We allocated the benefit in the year of receipt, thereby calcuating an estimated net subsidy of 0.10 percent to USIMINAS.

2. *Competitive Benefit.* The second step of the test outlined in section 771A of the Act is the determination of whether the subsidies received by the upstream suppliers bestow a "competitive benefit" on the merchandise under investigation. Under the terms of section 771A(b)(1),

> [a] competitive benefit has been bestowed when the price for the input product * * * is lower than the price that the manufacturer or producer of merchandise which is the subject of the countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

Pursuant to this statutory language, we would have compared ACESITA's and USIMINAS' prices to prices charged by unsubsidized Brazilian producers of the steel inputs used by tillage tool producers. However, we are unaware of any unsubsidized Brazilian producers of these inputs. Therefore, as the next step, we would have compared ACESITA's and USIMINAS' prices to prices paid for unsubsidized imported steel used by the tillage tool respondents, or, failing that, to respondents' information on world market prices for their steel inputs. In the absence of any such information from respondents, we have used the best information otherwise available to calculate a "benchmark" price with

which to compare ACESITA's and USIMINAS' prices.

Lacking the preferred benchmarks, the first "benchmark" price we considered using was the petitioners' estimate of the 1983 price for steel imported into Brazil. Petitioners calculated this by adjusted a 1982 price, obtained from their sources in Brazil, for inflation. Because this "benchmark" price applied to steel imports generally and not to the specific inputs used by tillage tool producers, and because it was based on 1982 prices adjusted for inflation, we sought more accurate information for use as our benchmark.

Secondly, we reviewed the average Japanese f.o.b. price of plate and sheet in 1983 for exports to countries other than the United States, as reported in *Metals Intelligence International*, which incorporates data from trade publications such as *Tekko Shinbun*, *Japan Metal Bulletin*, and *Japan Steel Journal*. To this avarage Japanese price, we added an average ocean freight and insurance charge derived from U.S. Customs Service Special Summary Steel Invoices correspondig to shipments of steel coil from Japan to the East Coast of the United States during the period December 1983 to February 1984.

Respondents state that any customs duties on imported steel inputs can be refunded upon exportation of the finished product in the form of a duty drawback. Because of this statement, we calculated two surrogate import prices based on the Japanese f.o.b. price plus freight and insurance: (1) A surrogate price for steel inputs used in the manufacture of tillage tools for export sales that did not include import duties, and (2) a surrogate price for steel inputs used in the manufacturer of tillage tools for domestic sales that included an average import duty based on the 1985 edition of the *Tarifa Aduaneira do Brasil*. We weighted the first price by the percentage that Brazilian tillage tool exports represent of total sales of tillage tools, and the second price by the percentage of tillage tools sold for consumption in Brazil. The weighted average of these two prices is our benchmark price for purposes of comparison with the prices charged by ACESITA and USIMINAS.

We then compared ACESITA's and USIMINAS' prices to the benchmark price, and found they were lower than the benchmark price. Because both ACESITA's and USIMINAS' prices are below our benchmark price, we preliminarily determine that the "competitive benefit" test has been met.

3. *Significant Effect.* The third and final step of the statutory test is to determine whether the subsidy received by the upstream suppliers has a significant effect on the cost of manufacturing or producing the merchandise. We multiplied the *ad valorem* subsidy rates calculated for ACESITA and USIMINAS by the percentage that the government of Brazil claims the subsidized steel inputs account for in the cost of producing tillage tools. In both cases, we found that the estimated net subsidy accounted for more than one percent of the cost of manufacturing or producing the merchandise. For purposes of this preliminary determination, we consider that the "significant effect" test has been met. Nevertheless, since this is the first determination under section 771A of the Act, we welcome comments on the threshold for, and the measurement of, "significant effect."

All three tests outlined in section 771A(c) having been met, we preliminarily determine that benefits bestowed upon ACESITA and USIMINAS confer an upstream subsidy upon the products under investigation.

4. *Measurement of Upstream Subsidization.* Under section 771A(c) of the Act,

> The administering authority shall include in the amount of any countervailing duty imposed on the merchandise an amount equal to the amount of the competitive benefit . . . except that in no event shall the amount be greater than the amount of subsidization determined with respect to the upstream product.

Pursuant to this statutory language, we added the estimated net subsidy received by ACESITA and USIMINAS to each company's average price in 1983 in order to compare each company's domestic price (including subsidies) for the steel inputs used by Brazilian tillage tool manufacturers to the benchmark price. We compared the domestic prices (including subsidies) of both ACESITA and USIMINAS to our benchmark price, and found that both companies' prices were lower than our benchmark price. Since these prices (including subsidies) were below our benchmark price, the subsidy bestowed upon ACESITA and USIMINAS is passed through in totality to the tillage tool respondents.

We calculated the overall subsidy passed through to tillage tool producers by weighting the net subsidy per ton received by ACESITA and USIMINAS by the tonnage each steel company sold to the respondents in 1983. We then expensed the overall subsidy thus calculated over the total value of tillage tools sold by the three respondents in 1983, and calculated an estimated net upstream subsidy of 0.71 percent *ad valorem*.

II. Programs Determined Not To Be Used

We preliminarily determine that manufacturers, producers or exporters in Brazil of certain agricultural tillage tools did not use the following programs which were listed in our notice of "Initiation of a Countervailing Duty Investigation: Agricultural Tillage Tools from Brazil" (49 FR 40431).

A. IPI Tax Rebates for Capital Investment

Decree-Law 1547, enacted in April 1977, provides funding for approved expansion projects in the Brazilian steel industry through a rebate of the IPI, a value-added tax imposed on domestic sales.

The government of Brazil stated in its response that tillage tool producers are not eligible for IPI rebates under Decree-Law 1547. Accordingly, we preliminarily determine that this program was not used.

B. Resolution 330 of the Banco Central do Brasil

Resolution 330 provides financing for up to 80 percent of the value of the merchandise placed in a specific bonded warehouse and destined for export. Exporters of agricultural tillage tools would be eligible for financing under this program. However, the government of Brazil stated in its response that none of the tillage tool producers participated in this program during the review period; therefore, we preliminarily determine that this program was not used.

C. Exemption of IPI Tax and Customs Duties on Imported Equipment (CDI)

Under Decree-Law 1428, the Conselho do Desenvolvimento Industrial (Industrial Development Council, or CDI) provides for the exemption of 80 to 100 percent of the customs duties and 80 to 100 percent of the IPI tax on certain imported machinery for projects approved by the CDI. The recipient must demonstrate that the machinery or equipment for which an exemption is sought was not available from a Brazilian producer. The investment project must be deemed to be feasible and the recipient must demonstrate that there is a need for added capacity to Brazil.

The government of Brazil stated in its response that none of the tillage tool producers received incentives under this program during the review period. Accordingly, we preliminarily determine that this program was not used.

D. The BEFIEX Program

The Comissao para a Concessao de Beneficios Fiscais a Programas Especiais de Exportaçao (Commission for the Granting of Fiscal Benefit to Special Export Programs, or BEFIEX) grants at least three categories of benefits to Brazilian exporters:

- Under Decree-Law 77.065, BEFIEX may reduce by 70 to 90 percent import duties and the IPI tax on the importation of machinery, equipment, apparatus, instruments, accessories and tools necessary for special export programs approved by the Ministry of Industry and Trade, and may reduce by 50 percent import duties and the IPI tax on imports of components, raw materials and intermediary products;
- Under article 13 of Decree No. 72.1219, BEFIEX may extend the carry-forward period for tax losses from 4 to 6 years; and
- Under article 14 of the same decree, BEFIEX may allow special amortization of pre-operational expenses related to approved projects.

In its response, the government of Brazil stated that tillage tool producers did not participate in this program. Accordingly, we preiminarily determine that this program was not used.

E. The CIEX Program

Decree-Law 1428 authorized the Comissao para Incentivos à Exportaçao (Commission for Export Incentives, or CIEX) to reduce import taxes and the IPI tax up to 10 percent on certain equipment for use in export production. In its response, the government of Brazil stated that none of the tillage tool producers received any benefits under this program. Accordingly, we preliminarily determine that this program was not used.

F. Accelerated Depreciation for Brazilian-Made Capital Equipment

Pursuant to Decree-Law 1137, any company which purchases Brazilian-made capital equipment and has an expansion project approved by the CDI may depreciate this equipment at twice the rate normally permitted under Brazilian tax laws. In its response, the government of Brazil stated that none of the respondents availed itself of this program during the review period. Therefore, we preliminarily determine that this program was not used.

G. Incentives for Trading Companies

Under Resolution 643 of the Banco Central do Brasil, trading companies can obtain export financing similar to that obtained by manufacturers under Resolutions 674, 882, and 950. In its response, the government of Brazil stated that tillage tool producers were ineligible for participation in this program because such participation is precluded by receipt of working-capital export financing. Accordingly, we preliminarily determine that this program was not used.

H. The PROEX Program

Short-term credits for exports are available under the Programa de Financiamento à Produçao para a Exportaçao (PROEX), previously referred to as the Apôio à Exportaçao program. In its response, the government of Brazil stated that none of tillage tool producers participated in this program during the review period. Accordingly, we preliminarily determine this program was not used.

I. Income Tax Deductions for Foreign Selling Expenses

The government of Brazil offers income tax deductions for foreign selling expenses, although such deductions are not allowed for equivalent domestic expenses.

The government of Brazil stated in its response that tillage tool producers had not taken these deductions. Accordingly, we preliminarily determine this program was not used.

J. Programs Not Used by Upstream Suppliers of Steel Inputs

1. *Special Tax Deductions.* In its response, the government of Brazil states that USIMINAS did not use losses of other companies in the SIDERBRAS group to offset profits during the review period. Neither company benefits from any local tax incentives which minimize their tax liability. Accordingly, we preliminarily determine that this program was not used by either ACESITA or USIMINAS.

2. *Accelerated Depreciation for Brazilian-Made Capital Equipment.* According to the government of Brazil, ACESITA participated in this program, but recaptured more accelerated depreciation than it claimed during the review period, thereby cancelling out any benefit that would have accrued to ACESITA. Accordingly, we preliminarily determine that this program was not used.

III. Programs Preliminarily Determined to Require Additional Information

A. IPI Export Credit Premium

Until very recently, Brazilian exporters of manufactured products were eligible for a tax credit on the Imposto sôbre Produtos Industrializados (Tax on Industrialized Products, or IPI). The IPI export credit premium, a cash reimbursement paid to the exporter upon the export of otherwise taxable industrial products, was found to confer a subsidy in previous countervailing duty investigations involving Brazilian products. After having suspended this program in December 1979, the government of Brazil reinstated it on April 1, 1981.

Subsequent to April 1, 1981, the credit premium was gradually phased out in accordance with Brazil's commitment pursuant to Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"). Under the terms of "Portaria" (Notice) of the Ministry of Finance No. 176 of September 12, 1984, the credit premium was eliminated effective May 1, 1985. Consistent with our stated policy of taking into account program-wide changes that occur prior to our preliminary determination, we are not including this program in calculating the deposit/bonding rate. However, we intend to ascertain at verification that no exports declared eligible for the credit premium before May 1, 1985, were still receiving it after that date.

B. Resolution 68 (FINEX) Financing

Resolution 68 of the Conselho Nacional do Comércio Exterior (CONCEX) provides that CACEX may draw upon the resources of the Fundo de Financiamento à Exportaçao (FINEX) to extend dollar-denominated loans to foreign buyers of Brazilian goods. Financing is granted on a transaction-by-transaction basis.

In its response, the government of Brazil stated that the respondents did not receive Resolution 68 financing on transactions with the United States during the review period. We intend at verification to obtain complete and accurate information from the administrators of the FINEX program as to the level of financing (if any) received by United States importers of agricultural tillage tools from Brazil.

C. Loan Guarantees to Upstream Suppliers on Foreign-Denominated Debt

In its upstream subsidy response, the government of Brazil stated that USIMINAS received no government loan guarantees on foreign-denominated debt during the review period. We have no evidence that such guarantees have been provided to ACESITA. We have asked respondents for complete information with respect to these guarantees. We will review this program fully at verification.

Preliminary Affirmative Determination of Critical Circumstances

Petitoners alleged that imports of certain agricultural tillage tools from Brazil present "critical circumstances." Under section 703(e)(1) of the Act, critical circumstances exist when the Department has a reasonable basis to believe or suspect that: (1) The alleged subsidy is inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"), and (2) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In our preliminary determination, we have found that the government of Brazil confers export subsidies on certain agricultural tillage tools. Although Article 9 of the Subsidies Code provides a general prohibition on the use of export subsidies on non-primary products, Article 14 provides an exception under which export subsidies maintained by a developing country are not automatically considered to be a violation of Article 9. Article 14 is applicable to Brazil as a developing country.

However, Article 14 does set limits on the exception otherwise provided in that article. The paragraph which sets out these limitations reads as follows:

> Developing country signatories agree that export subsidies on their industrial products shall not be used in a manner which causes *serious prejudice* to the trade or production of another signatory.

The Department must determine whether there is sufficient positive evidence on the record that provides a reasonable basis to believe or suspect that, in this case, export subsidies maintained by the government of Brazil cause serious prejudice to the trade or production in the Unitd States within the meaning of Article 14§3 and, hence, are inconsistent with the Agreement. Evidence on the record in this case includes import volume, information on material injury included in the petition, and more importantly, the preliminary determination by the ITC (49 FR 37856) that there is a reasonable indication that the U.S. domestic industry is being threatened with material injury by reason of subsidized imports.

On the basis of this information, we preliminarily determine that there is a reasonable basis to believe or suspect that these subsidized imports have caused serious prejudice to the production of certain agricultural tillage tools in the United States.

In preliminarily determining whether there is a reasonable basis to believe or suspect that there have been massive imports over a relatively short period, we considered the following factors: (1) Whether imports have surged recently, (2) whether recent imports are significantly above the average calculated over several years (1980–1984), (3) whether the patterns of imports over that four-year period may be explained by seasonal swings. Based upon our analysis of the information, we preliminarily determine that imports of the products covered by this investigation appear massive over a relatively short period.

For the reasons described above, we preliminarily determine that "critical circumstances" exist with respect to certain agricultural tillage tools from Brazil.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all unliquidated entries of certain agricultural tillage tools from Brazil entered, or withdrawn from warehouse, for consumption, on or after the date which is 90 days before the date of publication of this notice in the **Federal Register**, and to require an *ad valorem* cash deposit or bond for each such entry of this merchandise of 4.33 percent *ad valorem*. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure or threaten material injury to a U.S. industry 120 days after the Department makes its preliminary affirmative determination or 45 days after its final affirmative determination, whichever is latest.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunities to comment on this preliminary determination on July 19, 1985 at 10:00 a.m. at the U.S. Department of Commerce, room 3706, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, room B–099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of pre-hearing briefs must be submitted to the Deputy Assistant Secretary by July 12, 1985.

Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within 30 days of the publication of this notice, at the above address and in at least 10 copies.

This notice is published pursuant to section 703b(f) of the Act (19 U.S.C. 1671(f)).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 4, 1985.

[FR Doc. 85–13916 Filed 6–7–85; 8:45 am]

BILLING CODE 3510-DS-M

[A–201–403]

Termination of Antidumping Duty Investigation; Oil Country Tubular Goods From Mexico

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On May 31, 1985, Lone Star Steel Company and CF&I Steel Corporation withdrew their antidumping petition, filed on June 13, 1984, on oil country tubular goods from Mexico. Based on the withdrawal, we are terminating the investigation.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Jay Kenkel, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–3965.

SUPPLEMENTARY INFORMATION:

Case History

On June 13, 1984, we received a petition from Lone Star Steel Company and CF&I Steel Company filed on behalf

of the U.S. industry producing oil country tubular goods.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the International Trade Commission (ITC) of our action and initiated the investigation on July 22, 1984 (49 FR 28087). On July 30, 1984, the ITC found that there was a reasonable indication that imports of OCTG from Mexico materially injure, or threaten material injury to, a United States industry. On August 3, 1984, LTV Steel Company became an additional petitioner. On January 9, 1985, we made a preliminary determination that OCTG from Mexico were being, or were likely to be, sold in the United States at less than fair value (50 FR 2313).

Scope of Investigation

The products under investigation are oil country tubular goods (OCTG). OCTG are extension hollow steel products of circular cross section intended for use in the drilling of oil or gas. OCTG includes oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, to either American Petroleum Institute (API) or non-API specifications (such as proprietary), as currently provided for in the Tariff Schedules of the United States, Annotated (TSUSA) items 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3935, 610.3925, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244.

This investigation includes OCTG that are finished and unfinished.

Withdrawal of Petition

On May 31, 1985, petitioners notified us that they were withdrawing their petition, and requested that the investigation be terminated. Under section 734(a) of the Tariff Act of 1930, as amended by section 604 of the Trade and Tariff Act of 1984 (the Act), upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. This withdrawal is based on arrangements with the Government of Mexico to limit the volume of imports of this product. We have assessed the public interest factors set out in section 734(a) of the Act and consulted with potentially affected producers, workers, and consuming interests and with the ITC. On the basis of our assessment of the public interest factors and our consultations with affected interests, we have determined that termination would be in the public interest.

We have notified all parties to the investigation and the ITC of petitioners' withdrawal and our intention to terminate.

For these reasons, we are terminating our investigation.

Dated: May 31, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-13919 Filed 6-7-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-469-405]

Oil Country Tubular Goods From Spain; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of intention to review and preliminary results of changed circumstances administrative review and tentative determination to revoke antidumping duty order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the antidumping duty order on oil country tubular goods from Spain. The review covers the period from October 18, 1984. The petitioners and other domestic interested parties to this proceeding have notified the Department that they are no longer interested in the antidumping duty order. These affirmative statements of no interest from domestic interested parties provide a reasonable basis for the Department of revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioners' notifications, the revocation will apply to all oil country tubular goods entered, or withdrawn from warehouse, for consumption on or after October 18, 1984.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 18, 1984.

FOR FURTHER INFORMATION CONTACT: Stephen Munroe or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On May 24, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 21479) an antidumping duty order on oil country tubular goods from Spain.

The petitioners, Lone Star Steel Company, CF&I Steel Corporation, and LTV Steel Company, and other domestic interested parties, U.S. Steel Corporation, Babcock & Wilcox, and Armco, Inc., informed the Department that they were no longer interested in the order and stated their support of revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of oil country tubular goods currently classifiable under items 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, 610.5244 of the Tariff Schedules of the United States Annotated. The review covers the period from October 18, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminary determine that the domestic interested parties' affirmative statements of no interest in continuation of the antidumping duty order on oil country tubular goods from Spain provide a reasonable basis for revocation of the order. In light of the October 18, 1984, effective date for revocation requested by the domestic parties, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on oil country tubular goods from Spain effective October 18, 1984. We intend to 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 October 18,

1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 31, 1985.

[FR Doc. 85-13917 Filed 6-7-85; 8:45 am]

BILLING CODE 3510-DS-M

Television Receiving Sets, Monochrome and Color, From Japan; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On August 18, 1983, the Department of Commerce published the preliminary results of its administrative review of and tentative determination to revoke in part the antidumping finding on television receiving sets, monochrome and color, from Japan. The review covers 16 of the 18 known Japanese manufacturers and/or exporters of this merchandise to the United States currently covered by the finding and the period April 1, 1980 through March 31, 1981.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. Based on our analysis of the comments received we have changed our final results from those presented in our preliminary results of review.

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Michael Hudak or Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2923/5255.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 37506, 37508) the preliminary results of its administrative review of and tentative determination to revoke in part the antidumping finding on television receiving sets, monochrome and color, from Japan (36 FR 4597, March 10, 1971). In accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of television receiving sets, monochrome and color, from Japan. Television receiving sets include but are not limited to projection televisions, receiver monitors, and kits (containing all the parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units (combinations of television receivers with other electrical entertainment components such as tape recorders, radio receivers, etc.), and certain sub-assemblies not containing the components essential for receiving a broadcast television signal and producing a video image.

The review covers 16 of the 18 known Japanese manufacturers and/or exporters of this merchandise to the United States currently covered by the finding and the period April 1, 1980 through March 31, 1981.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results, as provided by § 353.53(d) of the Commerce Regulations. At the request of the Independent Radionic Workers of America, International Brotherhood of Electrical Workers, International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, AFL-CIO-CLC (collectively referred to as "the Unions"), Zenith Radio Corporation and NEC Corporation, we held a public hearing on October 5, 1983. We received comments from Zenith, the Unions, and respondents Hitachi, Ltd., General Corporation of Japan, Matsushita Electric Industrial Co., Ltd., Victor Company of Japan, Toshiba Corporation, NEC, and Sanyo Electric Co., Ltd.

Comment 1: Zenith and the Unions argue that the Department erred when, in the preliminary results of administrative review, it added to United States price the commodity tax imposed on the home market merchandise. They contend that section 772(d)(1)(C) of the Tariff Act clearly directs the Department to add to U.S. price the tax amount that would have been imposed on the exported merchandise had it been sold in Japan. The Department also has no authority merely to strip the tax out of the foreign market value. The Congress in 1919-21 explicitly rejected subtraction and understood that the addition to U.S. price would not achieve tax neutrality in the calculation of dumping margins.

Further, Zenith and the Unions contend that the addition to U.S. price must be limited to the amount of the tax that is included in the price of the merchandise, *i.e.* passed on to the customer, when sold in the home market. They state that, when discounts and rebates provided on home market sales equal or exceed the tax paid on those sales, the Department should assume no pass-through of the tax and make no adjustment to the U.S. price. Zenith argues that the amount by which a manufacturer's commodity tax value plus commodity tax exceeded that manufacturer's home market sales price reported to the Department represents the amount of the commodity tax not passed on to the purchasers. The Department should limit the addition to U.S. price to the amount passed on.

Matsushita, Victor, General and NEC maintain that the Department should continue to add to U.S. price the amount of the commodity tax collected on the home market comparison merchandise.

General and NEC maintain that the method advocated by Zenith and the Unions would result in an unfair comparison, because the commodity tax is a uniform percentage tax which will act to increase any pre-existing differential between base prices. They note that, if the commodity tax is applied prior to making ordinary adjustments for differences in circumstances of sale and in the physical characteristics of the merchandise, a price differential could exist solely due to the application of the tax. In other words, if there were a

differential in starting prices that was solely the result of differences in the physical characteristics of the merchandise or of the advertising costs in the two markets, applying the tax rate to the different starting prices would create a dumping margin, unless there were a second round of offsetting adjustments.

The respondents state that the clear purpose of the adjustment under section 772(d)(1)(C) is to neutralize the impact of different tax assessments on home market and export sales in determining whether dumping margins exist. They claim that, even if the Department could apply the complex Japanese commodity tax formula to the export merchandise, the Department would have to make additional adjustments for the element of the differential stemming from multiplying the unadjusted bases by the tax rate. They argue that we achieve the same result by adding to U.S. price the amount of tax imposed on the home market comparison sets.

Department's Position: We agree with the petitioners that, for reasons considered important when the provision was enacted as part of the Antidumping Act of 1921, Congress called for the addition to the U.S. price of the amount of the tax that would have been collected on the merchandise exported to the United States had the merchandise not been exported. The tax-neutral method of subtracting the amount of the tax on the home market merchandise was rejected at that time as infeasible.

Congress, the courts, and the agencies charged with administration of the antidumping law have emphasized the statutory purpose of achieving a comparison of the merchanise on a fair basis, "comparing apples to apples." Neither the method advocated by the petitioners nor that advocated by the respondents would achieve a tax neutral comparison. The Department, like the Treasury Department before it, generally assesses antidumping duties based on an absolute margin (foreign market value minus U.S. price) for each sale of the merchandise, and calculates *ad valorem* margins for purposes of issuing orders, setting cash deposit rates, and revoking orders. The *ad valorem* weighted average margin is the total amount of absolute margins on individual sales divided by the total U.S. price for all entries. The petitioner's approach would have the effect of increasing the absolute margin of dumping for assessment, provided there would be a dumping margin in the total absence of taxes in both markets. The respondents' approach (adding to the U.S. price the amount of the tax on the home market sales) neutralizes the multiplier effect on the absolute margin but reduces the *ad valorem* weighted average margin below the level of that margin in the total absence of taxes in both markets.

We also believe, as respondents contend, that there are significant differences in circumstances of sale and differences in physical characteristics of the merchandise that, if not taken into account, would increase the artificial multiplier effect on the absolute and *ad valorem* dumping margins.

We cannot accept Zenith's approach to measuring the pass-through. Discounts and rebates may be provided for a number of reasons, and we have no evidence of a relationship between the discounts and rebates and the manufacturers' commodity tax liability. Absent evidence that clearly demonstrates that a manufacturer's commodity tax cost is not reflected in home market sales prices, the Department may reasonably conclude that cost and price are directly related. To date, the Department has not developed a reasonable method for isolating the cost-price relationship for individual adjustments.

While we did verify the actual amount of the commodity tax paid on the home market merchandise, we have been unable to establish from our review of the materials obtained in response to our questionnaire and at verification what the appropriate tax basis would be for the exported merchandise and exactly how the Japanese taxing authority would calculate the amount of tax on exported merchandise. We have revised our preliminary results calculation by deducting from the home market price the amount of the commodity tax paid on sales of that merchandise. In the absence of a reasonable method for applying the statutory adjustment directly to U.S. price, we believe that this is a reasonable alternative calculation of what the amount of the adjustment should be, based on the best available information. Moreover, this adjustment is consistent with the statutory purpose of a fair comparison of prices.

Comment 2: Zenith and the Unions contend that we incorrectly calculated foreign market value for certain respondents (in particular NEC and General) because we used weighted average selling prices. They state that the antidumping law is transactional in nature, which means that the Department must compare prices of particular sales at a particular time in two markets. They argue that the essential thrust of the law is to use a specific actual price, not a representative price. They acknowledge that the Tariff Act does provide authority for the Department to use weighted average prices in determining foreign market value, but they argue that Congress clearly intended that the authority be used only in rare instances, in cases of highly volatile price changes such as in sales of fungible commodities. Section 773(f) of the Tariff Act cannot be read to make a nullity of the criteria of section 773(a).

Zenith and the Unions states that section 773(a)(1) of the Tariff Act lists three distinct steps the Department must follow to determine which transaction price to use as foreign market value or even which prices to weight average. First, the Department must determine the usual wholesale quantities (*i.e.*, a predominant sale size, not the average quantity) in which the merchandise is sold; second, the Department must examine sales at the time of exportation or on the date of the U.S. sale (not sales over time nor sales after the date of the U.S. sale); third, the price selected for foreign market value must be the price in the principal markets (not an average of the prices in all markets within Japan); and finally, the sales must meet the "all purchasers" requirement. Relying on court cases involving the customs valuation law, Zenith and the Unions urge that we use the price to the least favored class of Japanese customers in our calculation of foreign market value. Zenith and the Unions contend that, by using these steps, the Department could eliminate any need to resort to weighted average prices in determining foreign market value.

General and NEC take issue with the assertion that the Department improperly used weighted average prices. Both companies state that Congress considered the 1979 authority to weight-average in calculating foreign market value to be an important modification to the law and, as such, Congress did not intend that it be used only in rare circumstances. Both maintain that the suggestion by Zenith and the Unions, that we use only the price available to all purchasers, is unfair in that it would force us to compare the U.S. price with the highest home market price at a selected point in time.

Both General and NEC refer to language in the Tariff Act that provides for using weighted averages when there is a significant number of sales or adjustments. General argues that liberal use of the authority of section 773(f) should not be subordinated to section

773(a), for it is precisely the burden of the calculations under section 773(a) that section 773(f) was designed to ameliorate. General also notes that it sells in Japan to approximately 4,000 retailers, ranging in size from large retail outlets to small stores. NEC points out that it reported more than 6,000 sales of the home market comparison merchandise at a wide range of prices during the review period and argues that isolating particular sales for comparison violates the fairness concept embodied in the antidumping law.

General contents that, if the Department accepts the approach urged by Zenith and the Unions and resorts to a transaction-to-transaction comparison, the Department should not consider sales to small and medium size stores when determining the usual wholesale quantities.

Department's Position: Section 773(f)(1) of the Tariff Act authorizes the Department to use averaging or generally recognized sampling techniques. Where a significant number of comparison sales exist and prices vary over time, the Department has followed a practice of weight-averaging, by month, home market prices to determine foreign market value. We believe that our use of the authority in section 773(f) is in harmony with the requirements of section 773(a).

We have verified that, during the period reviewed, General sold directly to more than 4,000 retailers in Japan and NEC made more than 6,000 comparison sales. The selling prices varied, depending on the particular competitive situation at the time of sale within the particular sales area. Under these circumstances we believe that use of a monthly weighted average foreign market value is more appropriate than attempting to isolate one particular transaction for purposes of price comparison.

In our preliminary results, we used weighted average prices for periods longer than one month. This does not conform to our practice in administrative reviews. Consequently, we have calculated monthly weighted average prices on home market sales to determine foreign market value for General and NEC. This weighted average price is not a hypothetical constructed price; it is based on the actual prices at which the comparison merchandise was sold in Japan.

Comment 3: Zenith contends the Department erroneously used the sales price to related purchasers in Japan to determine foreign market value. The Department at least should have verified the arm's length nature of the prices by comparing them with the values used to calculate the commodity tax paid by respondents on those sales.

Zenith contends that each of the manufacturers is related, within the meaning of the Tariff Act, to its home market purchasers. To support this claim Zenith describes a socio-economic group system in Japan known as "keiretsu" in which groups act to maximize group benefits and place the common interests of the entire group above the interests of individual members.

Zenith submits that, under these circumstances, prices which respondents reported for establishing foreign market value are suspect, and the Department cannot reasonably accept them as true arm's length prices merely based on an absence of any equity relationship between the seller and buyer or on the existence of allegedly uniform prices. In view of the control the Japanese manufacturers possess over their distribution channels through mechanisms other than equity ownership, Zenith maintains the Department should use as unadjusted foreign market value the sales values upon which manufacturers paid the Japanese commodity tax.

Victor argues that all of its home market sales were to unrelated parties (the dealers which purchase from Victor's related distributors) within the meaning of section 771(13) of the Tariff Act. To the extent that Zenith is attempting to expand the concept of control through its keiretsu argument, Victor considers the underlying studies preferred by Zenith to be both out of date for purposes of this section 751 review and unreliable.

Both Matsushita and Victor argue that the Department should not adopt Zenith's suggestions to test for arm's length pricing by comparing actual prices with the taxable values reported for the commodity tax or use those taxable values as unadjusted foreign market value. They claim that the taxable values are hypothetical constructs, not actual sales prices.

Department's Position: We used actual home market selling prices to calculate foreign market value, after conducting on-site verifications of the accuracy and arm's length nature of those prices. Where there were sales to related and unrelated parties, we examined sales to the unrelated purchasers, and if the price to the unrelated purchaser was higher, we used that price.

The court in *Zenith Corp.* v. *United States*, Slip Op. 85-30 (C.I.T.: March 13, 1985) concluded that the requirements of the antidumping law are satisfied when the Department investigates whether there is a financial relationship between the seller and buyer. To go further and investigate non-financial relationships is not required by the Tariff Act.

Even if we accepted the keiretsu argument, we could not employ, as Zenith and the Unions suggest, the tax basis on which the commodity tax is paid as the unadjusted foreign market value. First, the tax basis itself would be equally "tainted" by the relationship presumed to exist between buyer and seller. Second, when we determine that sales in the home market are not at arm's length prices, we interpret section 771 (13) and (14) and section 773(a) of the Tariff Act to require us to use either third country sales or constructed value. We do not have authority to resort first to the commodity tax basis as a "best information available" price.

We also cannot accept Zenith's suggestion that we test the arm's length nature of home market prices by comparing the prices reported to the Department with the prices used as the basis for calculation of the commodity tax. The proper way to validate related party prices is to comapre those prices to the prices of commercially significant sales to unrelated parties. Given that the commodity tax basis appears to be a hypothetical price construct, not necessarily equal to unadjusted foreign market value under section 773 of the Tariff Act, we believe that comparisons with the commodity tax basis serve no useful purpose in this proceeding.

Comment 4: Zenith and the Unions argue that the Department erred by deducting from foreign market value certain price discounts and rebates that were not available to all purchasers. They state that section 771(14) of the Tariff Act requires that a discount or rebate must be offered "to all purchasers at wholesale" to qualify as part of the calculation of the unadjusted foreign market value. Zenith and the Unions contend that the manufacturers make discounts and rebates available only in special situations to selected customers and that those discounts and rebates represent bargained-for price concessions which vary from customer to customer and transaction to transaction. Consequently, Zenith and the Unions contend that those discounts and rebates do not meet the statutory criteria for adjustment to prices.

Zenith states further that discounts and rebates can only be considered as reductions to price (not as circumstance-of-sale adjustments to foreign market value), because they are agreed-upon price reductions rather than expenses incurred by the manufacturer.

Citing the Department's own protest decisions in March 1980, the Unions argue that deducting such discounts and rebates is not a long-standing administrative practice, as asserted by the Department in the final results of the first administrative review of this finding.

In opposition to the so-called "highest price" or "list price" approach of Zenith and Union, Matsushita and Victor argue that Congress modified the antidumping law to permit calculation of foreign market value based on weighted average prices. They state that Zenith's and the Unions' approach not only lacks a basis in law; it is inherently unfair and protectionist. Under the statute and the regulations, the Department can include in the weighted average foreign market value all actual home market prices, including those subject to discounts and rebates.

Further, Matshushita and Victor argue that, even if we do not take into account discounts and rebates in determining unadjusted foreign market value, such actual expenses are appropriate circumstance-of-sale adjustments.

Department's Position: We believe that we may take discounts and rebates into account in calculating foreign market value, as either a circumstance-of-sale adjustment or as a price adjustment. The Department and the Treasury Department before it have had a longstanding practice of reflecting in foreign market value calculations all discounts and rebates to the extent actually provided, regardless of whether they are available to all purchasers. (The protest decisions referred to by the Unions do not represent another administrative practice because those decisions were not implemented and were, in fact, superseded shortly after they were issued.)

The Court of Appeals for the Federal Circuit ("CAFC") has upheld the Department's authority to make circumstance-of-sale adjustments for rebates. *Brother Industries* v. *United States*, 3 CIT 125, 540 F. Supp. 1341 (1982), *aff'd sub. nom., Smith-Corona Group, Consumer Products Division, SCM Corp.* v. *United States*, 713 F. 2d. 1568 (Fed. Cir. 1983), *cert. denied*, 104 S. Ct. 1274 (1984) ("*SCM*"). The same principle applies to discounts.

We cannot accept Zenith's and the Unions' argument that a discount or rebate is an appropriate price adjustment only if available to all purchasers. This conclusion is not required by the Tariff Act and its history, and is contrary to the principle of price comparability in dumping determinations that the CAFC recognized in *SCM*. The history of the antidumping law, at least since 1958, demonstrates that Congress and the courts have become increasingly aware of the need for fair price comparisons in the determination of dumping. To make the dumping law consistent with customs valuation law is no longer, if it ever was, a central legislative purpose. The concept of price comparability, which is central to the antidumping law, is totally irrelevant to customs valuation law.

Comment 5: Zenith argues that the Department improperly allowed deductions from foreign market value for after-sale rebates. Zenith maintains that the Tariff Act requires that we treat rebates only as deductions from price and, under section 773(a)(1) of the Tariff Act, make such deductions only if the rebate is reflected in the price to all purchasers on the appropriate date of sale. Rebates available upon the purchaser's fulfillment of a condition subsequent to the date of sale do not comprise part of the price on that date. Further, Zenith argues that after-sale rebates which are cumulative quantity rebates do not represent the price of merchandise sold in the usual wholesale quantities.

Department's Position: Rebates, whether fixed or determinable in amount at the time of sale, represent a reduction in the net return to the seller agreed upon at the time of sale, and for that reason they must be deducted in calculating foreign market value. Adjustment for after-sale rebates that are fixed or determinable in amount at the time of sale is a longstanding administrative practice. For the companies under review, the certainty of the rebate was established at the time of each sale to which the rebate applied. The Department's practice of allowing adjustments for after-sale rebates was affirmed by the CAFC in the *SCM* decision, *supra*.

Comment 6: Zenith submits that, assuming the legality of the exporter's sales price ("ESP") offset, we reduced foreign market value by an excessive amount, because we incorrectly determined the amount of indirect selling expenses includable in the ESP offset. Zenith argues that such expenses should be reduced by the total amount of indirect selling expenses incurred in the home market for export sales to the United States.

Matsushita and Victor argue that the Department's ESP offset regulation requires the deduction of *all* actual indirect selling expenses incurred in the home market up to the amount of the indirect selling expenses incurred in the U.S. They contend that Zenith's argument would have the effect of reducing the offset deduction of home market expenses by an amount not deducted in calculating U.S. price. They conclude that such an adjustment would further magnify the inequity that already exists because of the cap on the ESP offset adjustment.

NEC states that Zenith's statements are irrelevant to NEC, because NEC did not include home market indirect selling expenses incurred on U.S. sales in its home market indirect selling expenses.

Department's Position: We agree with Zenith that selling expenses incurred in the marketing of television sets in the United States cannot be included in the pool of home market indirect selling expenses used to offset indirect selling expenses deducted in our ESP calculation. We further believe that all selling expenses incurred in the marketing of television sets in the United States should be deducted from the U.S. price, regardless of the physical location of the entity that incurred the expense. We have revised our calculations accordingly.

Comment 7: Zenith argues that the Department failed to deduct all costs, charges, and expenses associated with certain NEC purchase price transactions. Specifically, Zenith contends that the Department must deduct a clearing agent fee charged by NEC's related U.S. subsidiary to its unrelated U.S. purchaser.

Department's Position: Prior to importation of the merchandise, the unrelated U.S. purchaser placed an order with NEC America at an f.o.b. Japan price, plus the estimated movement expenses and a clearing agent fee.

In our preliminary results, we calculated the purchase price by deducting from the selling price to the unrelated U.S. purchaser (including the estimated movement expenses and the fee) only the actual movement expenses. We have now corrected our calculations by also deducting the fee.

Comment 8: Victor believes that the Department erred by including accommodation sales within the scope of the administrative review. Victor makes accommodation sales of samples, used, or damaged televisions, in "as is" condition, to its employees and sales representatives, generally for cash in advance and at significantly reduced prices.

Victor believed those sales should not be subject to our administrative review because they are not sold "in the ordinary course of trade." Because sales used as the basis for determining foreign market value must be "in the ordinary course of trade," U.S. sales must be

limited to those made in like circumstances.

Victor further states that most televisions it sold as accommodation sets entered the United States during the prior administrative review period, for which the Department did not find any dumping margins for Victor. Victor claims the Department has no authority to review again transactions explicitly covered by the notice of final results of a prior administrative review (namely, all sets entered, not necessarily sold, during that review period). However, if the Department determines that those sales are subject to the antidumping finding and are covered by this administrative review, then the Department should make whatever adjustments are necessary to enable it to make a fair comparison. Comparison of accommodation sales in the U.S. with commercial (rather than accommodation) sales in Japan constitutes an "apples and oranges" comparison.

Department's Position: Goods entered for consumption are subject to an antidumping finding whenever ownership transfers from the exporter of such goods. Sales to employees and sales representatives are transfers of ownership. The words "in the ordinary course of trade" are found in section 773 of the Tariff Act, not in section 772. Such non-commercial disposals are subject to this finding, and to the extent that they occurred during the period covered by this review, they are properly the subject of this review.

As mentioned earlier, we have used monthly weighted averages of such or similar merchandise to calculate our foreign market value. We cannot selectively choose to disregard foreign market values established in accordance with the Tariff Act when merchandise is sold in the United States in other than normal commercial activities.

Comment 9: Sanyo asks the Department to reverse its decision that projection televisions are the same class or kind of merchandise as the televisions subject to this finding. Sanyo specifically focuses on the disparity in physical characteristics between a projection television and a "traditional" television.

Department's Position: We find no reason to reconsider our earlier decision that projection televisions are within the scope of this finding.

Comment 10: NEC and Sanyo contend that the Department incorrectly denied a portion of their home market credit expenses. NEC states that it borrows money to finance its continuing operations and that a portion of the borrowed funds finance sales for the period between delivery to its customers and their payment. NEC and Sanyo argue that the Department should allow the adjustment based on information in the record of this review which shows that NEC and Sanyo incurred short term debt to cover, among other things, the cost of delayed payment on sales in the home market and to the United States.

Sanyo argues that the legislative history of the circumstances of sale provision in section 773(a)(4) of the Tariff Act shows that the phrase "credit terms" refers to differences in terms of sale, not to whether a company had to incur debt specifically to finance a particular sale. Sanyo states that its interpretation is reflected in a longstanding administrative practice of adjusting for differences in credit expenses reflected in differences in terms of sale.

Zenith contends that the Department should not allow an adjustment for differences in credit unless respondents demonstrate that price varies with the length of delay in payment in particular transactions. Zenith argues that, where an identical set is sold at the same price whether a purchaser pays in 60 days or 120 days, the assumption that a credit cost has affected the set's value or price is destroyed and no adjustment should be allowed. Moreover, Zenith claims that Sanyo has failed to supply information to establish the actual periods of delay in payment.

Department's Position: Our practice of calculating credit expenses is similar to that used by many businesses. We use the date of shipment as the starting time for all of our credit calculations because the posting to the accounts receivable occurs on that date. We allow credit expenses for the period between the date of shipment and the date of payment.

We do not agree with Zenith's argument that no adjustment should be made absent evidence that differences in credit costs have affected the price (*i.e.* the value) of the merchandise. We made this adjustment in accordance with § 353.15(d) of the Commerce Regulations, which states that "in determining the amount of the reasonable allowances for any differences in circumstances of sale, the Secretary will be guided primarily by the cost of such differences to the seller . . . ." The regulation is valid and consistent with section 773(a)(4) of the Tariff Act, which states that an allowance will be made for any price differences "wholly or partly due to" differences in circumstances of sale. The CAFC has approved of our practice in *SCM, supra.* Because Sanyo and NEC have allowed certain home market customers additional time to pay, they have borne additional costs. The fact that they have not explicitly linked this cost to price does not dispose of the fact that they have had different credit expenses in the two markets or the reasonable assumption that these expenses affect the price or value of the merchandise. To the extent that our preliminary results disagreed with our practice described above, we have changed our calculations. Sanyo provided, and we used, data on its actual period between shipment and payment.

Comment 11: NEC alleges that the Department incorrectly denied circumstance-of-sale adjustments for certain portions of four categories of sales promotion expenses. The portions denied were "depreciation" of signboards and cars provided to retailers, room rental and catering costs for promotion of new merchandise and new sales techniques, instructors' salaries and room rental for training new employees, and assists (for advertising materials, invitations, and hall rentals fees) to large retailers for the retailers' outside (rather than in-store) exhibitions. NEC contends those promotional expenses are necessary to compete in the Japanese market and are expenses directly related to sales during the period.

Department's Position: NEC incurred sales promotion expenses in two areas: The sales promotion section of the home market sales division, which promotes sales of all home market products manufactured by NEC, and the television sales department of the television division, which promotes the sale of NEC televisions. We allowed an allocation of certain expenses incurred by the television sales division. We disallowed all sales promotion section expenses and certain television sales division expenses because these expenses were indirect selling expenses. While we do not believe that this approach is unreasonable, we have decided that the following methodology is more consistent with the Tariff Act and Commerce Regulations, and in future reviews we will apply this methodology. Where the sales promotion expense is directed specifically at promoting sales of a home market comparison model we will allow the full cost of the promotion as an adjustment to that model. If it is a multi-product or multi-model promotion, we will use reasonable allocation methods to determine the appropriate adjustment for the comparison models. Where the promotion concerns only non-comparison models, we will not

consider the cost to be a selling expense directly related to the comparison models used in our calculation of foreign market value.

Comment 12: NEC argues that the Department incorrectly disallowed the portion of NEC's advertising expense claim which was based on an allocation of expenses incurred on behalf of all home market products. NEC contends that allocation of multiple-product advertising expenses is a practice usually accepted by the Department and should be approved in this case.

Department's Position: We allocated advertising expenses incurred by the advertising department, and by the television sales department of the television division, to the home market comparison models. We disallowed certain advertising expenses because those expenses were indirect selling expenses. While we do not believe that this approach is unreasonable, we have decided that the following methodology is more consistent with the Tariff Act and the Commerce Regulations, and in future reviews we will apply this methodology. Where the advertisement is for an individual comparison model, we will allow the full cost of the ad as an adjustment to that model. If it is a multi-product or multi-model ad, we will use reasonable allocation methods to determine the appropriate adjustment for the comparison models included in the ad. Where the ad refers only to non-comparison models, we will not consider the cost of the ad to be a selling expense directly related to the comparison models used in our calculation of foreign market value.

Final Results of Review

As a result of the comments received, we have revised our preliminary results and we determine that the following margins exist for the period:

Manufacturer/exporter	Margin (percent)
Anta	0
Denki Onkyo	[1] 0.86
General	0
Gulraj	0.86
Hitachi	0.16
Kaga Denshi	0.86
Kogen	[1] 0.86
Matsushita	0
Mitsubishi	0.54
NEC	0.86
Nissei Sangyo	[1] 0.16
Original	[1] 0.86
Sankei	0.86
Sanyo	0
Toshiba	0
Victor	0.28

[1] No commercial shipments during the review period.

As mentioned earlier, on August 18, 1983, the Department published in the **Federal Register** a notice of tentative determination to revoke in part the finding on television receiving sets from Japan. NEC was one of five firms listed in that notice as eligible for consideration for revocation. Following publication of that notice we corrected mathematical errors in the preliminary calculations, thereby lowering Mitsubishi's weighted average margin below the 0.50 percent *de minimis* standard, and advised parties to the proceeding that Mitsubishi should have been included in our tentative determination to revoke in part.

Based on the margins listed above we are withdrawing the tentative determination to revoke with regard to NEC and Mitsubishi.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

As provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. Since the weighted average margins for Hitachi, Nissei Sanyo, and Victor are less than 0.50 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall waive the deposit requirements for shipments of television receiving sets from those firms. For any future shipments from a new exporter not covered in this or prior reviews, whose first shipments occurred after April 1, 1981, and who is unrelated to any reviewed firm, a cash deposit of 0.86 percent shall be required. These deposit requirements and waivers are effective for all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and shall remain in effect until publication of the final results of the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible.

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 § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 3, 1985.

[FR Doc. 85-13823 Filed 6-7-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

National Advisory Committee on Oceans and Atmosphere; Change in Future Meeting Dates

June 3, 1985.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), as amended, notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold meetings on the days listed below in calendar year 1985. All the meetings will be held in Washington, D.C. except for the November meeting which will be held in San Diego, CA. Exact times and locations will be announced at a later date.

The Committee, consisting of 18 non-Federal members appointed by the President from academia, business and industry, public interest organizations, and State and local governments was established by Congress by Pub. L. 95-63 on July 5, 1977. Its duties are to (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to the carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit such other reports as may from time to time be requested by the President or Congress.

The tentative meeting dates are as follows:

January 22, 23 (revised)—Tuesday and Wednesday
March 4, 5—Monday and Tuesday
April 17-18—Wednesday and Thursday
June 3, 4—Monday and Tuesday
July 15, 16—Monday and Tuesday
August 20, 21 (revised)—Tuesday and Wednesday
Sept. 30, Oct. 1—Monday and Tuesday
November 14, 15—Thursday and Friday

The public is welcome to the sessions and will be admitted to the extent that seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting. The Chairman retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning these meetings may be obtained through the Committee's Executive Director, Steven N. Anastasion, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., Page Building #1, Suite 438, Washington, DC 20235. The telephone number is 202/653-7818.

Dated: June 3, 1985.

Steven N. Anastasion,

Executive Director.

[FR Doc. 85-13901 Filed 6-7-85; 8:45 am]

BILLING CODE 3510-12-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval for Collection of Information About Product-Related Injuries

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3501 *et seq.*), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension through September 30, 1988 of approval for collection of information about product-related injuries.

The Commission is required by section 5(a) of the Consumer Product Safety Act (15 U.S.C. 2054(a)) to collect data and information related to the cause and prevention of death, injury, and illness associated with consumer products, and to conduct continuing studies and investigation of deaths, injuries, diseases, and economic losses involving consumer products. This information is used by the Commission to support rulemaking proceedings, development and improvement of voluntary standards, information and education programs, and administrative and judicial proceedings to remove unsafe products from the marketplace and consumers' homes.

Persons who have been involved in or who have witnesed accidents associated with consumer products are an important source of information about deaths, injuries, and illness resulting from such accidents. From consumer compliants, newspaper accounts, death certificates, hospital emergency room reports, and other sources, the Commission selects a limited number of accidents for investigation. These investigations may involve face-to-face or telephone interviews with accident victims or witnesses. The Commission plans to reduce the number of these interviews during the next three years, thereby reducing the hourly burden associated with this information collection activity.

Additional Details About the Requested Extension of Approval for Collection of Information

Agency Address: Consumer Production Safety Commission, 1111 18th Street, Washington, D.C. 20207.

Title of Information Collection: Follow-up Activities for Product-Related Injuries.

Type of Request: Extension of approval.

Frequency of Collection: One time for each respondent.

General Description of Respondents: Persons who have been involved in, or who have witnessed, accidents associated with consumer products.

Estimated Number of Respondents: 3,000.

Total Estimated Number of Hours for All Respondents: 4,267.

Comments: Comments on this request for extension of approval for collection of information should be addressed to Andy Velez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; telephone (202) 395-7413. Copies of the request for extension of approval for collection of information are available from Francine Shacter, Office of Budget, Program Planning, and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; Telephone (301) 492-6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: June 4, 1985.

Sheldon D. Butts,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 85-13965 Filed 6-7-85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Software

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Software will meet in open session on 8 July 1985 at the Pentagon, Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on 8 July 1985 the Task Force will meet to determine additional information requirements.

Persons interested in attending should contact Major Susan Swift, Task Force Executive Secretary, Telephone: (202) 695-7181. Space is limited and will be awarded on a first come first served basis.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 4, 1985.

[FR Doc. 85-13825 Filed 6-7-85; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, August 6, 1985, Tuesday, August 13, 1985; Tuesday, August 20, 1985 and Tuesday, August 27, 1985 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Installations and Logistics) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel

Policy & Requirements) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b.(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, D.C. 20301.

Dated: June 5, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-13888 Filed 6-7-85; 8:45 am]

BILLING CODE 3810-01-M

Special Advisory Committee to the Defense Financial and Investment Review: Meeting

ACTION: Notice of Special Advisory Committee Meeting.

SUMMARY: The Special Advisory Committee to the Defense Financial and Investment Review (DFAIR) study will meet in the Washington, D.C. metropolitan area on June 24, 1985 to discuss the DFAIR Final Report.

FOR FURTHER INFORMATION CONTACT: Individuals interested in attending the meeting should call the DFAIR office, telephone number (202) 695-5828/5830/5849, to obtain the time and location of the Special Advisory Committee meeting.

Dated: June 5, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-13874 Filed 6-7-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Application for Training Leading to a Commission in the United States Air Force (AF Form 56).

This form is used in applying for entry into training as prospective Air Force officers under one of the officer procurement programs indicated on the form. The information that is requested is needed by the selected boards to help determine the eligibility, suitability, and the physical and mental qualifications of the applicant. Civilians and active duty airmen who apply for training leading to a commission complete the form.

Individuals

Responses 6,200

Burden hours 2,067

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone number (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Wanda L. Williams, HQ AFMPC/MPCMOP, Randolph AFB, TX 78150-6001, telephone (512) 652-4382.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 4, 1985.

[FR Doc. 85-13826 Filed 6-7-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Thursday, 27 June 1985.

Time: 0900-1500 hours (Open).

Place: Pentagon, Washington, DC.

Agenda: The Training Effectiveness Subpanel of the 1985 Army Science Board Summer Study on Training and Training Technology—Applications for AirLand Battle and Future Concepts will meet to review progress to-date. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-13889 Filed 6-7-85; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 10, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the

information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: June 5, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Elementary and Secondary Education

Type of Review Requested: Extension
Title: Financial Status and Grant Performance Report—Indian Education Programs
Agency Form Number: ED 354, 354–1
Frequency: Annually
Affected Public: State or local educational agencies; Tribal schools; Indian tribes; Indian organizations; Indian institutions; Federally supported elementary and secondary schools for Indian children; Institutions of higher education
Reporting Burden: Responses: 1,200; Burden Hours: 3,600
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: These forms are required from each grantee annually. The grantee reports the amount of funds spent, amount remaining, number of students participating in the project, and the extent to which the project achieved its objectives.

Office of Educational Research and Improvement

Type of Review Requested: New
Title: Fast Response Survey System—Survey of School Districts on High School Academic Requirements and Initiatives
Agency Form Number: ED 2379–23
Frequency: Non-recurring
Affected Public: Local educational agencies
Reporting Burden: Responses: 600; Burden Hours: 300
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This survey will be used by the National Institute of Education to determine the level of local educational agency initiatives and to identify programs and issues that promote excellence in education.

[FR Doc. 85–13895 Filed 6–7–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

[Case No. WH–002]

Energy Conservation Program for Consumer Products; Petition for Waiver of Water Heater Test Procedure From Bock Water Heaters, Inc.

AGENCY: Conservation and Renewable Energy Office, DOE.

SUMMARY: Today's notice publishes a "Petition for Waiver" from Bock Water Heaters, Inc. (Bock) of Madison, Wisconsin, requesting a waiver from the Department of Energy (DOE) test procedure for water heaters. Bock manufactures a Model 32E oil-fired water heater which has a high mass heat exchanger. The petition requests DOE to grant Bock relief from the DOE test procedure for water heaters for its Model 32E oil-fired water heater on the basis that the existing test procedure yields materially inaccurate estimates of the energy consumption of this unit. DOE is soliciting comments, data, and information regarding the petition.

DATE: DOE will accept comments, data and information not later than July 10, 1985.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Test Procedures for Consumer Products, Case No. WH–002, Mail Station CE–112, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Mail Station CE–112, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9513

Background

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163, 89 Stat. 917), which was subsequently amended by the National Energy Conservation Policy Act (NECPA) Pub. L. 95–619, 92 Stat. 3266). This program requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including water heaters. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has also prescribed procedures by which manufacturers may petition for waiver of test procedure requirements for a particular basic model of a product covered by a test procedure and the Department may temporarily waive such test procedure requirements for such basic model. Waivers may be granted when one or more design characteristics of a basic model either prevent testing of the basic model according to the prescribed test procedure or lead to results so unrepresentative of the model's true energy consumption as to provide materially inaccurate comparative data. These waiver procedures appear at 10 CFR 430.27. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

Water heaters are one of the products covered by the Federal Trade Commission's (FTC) Appliance Labeling Program. The energy consumption of water heaters, as determined using DOE's test procedure, forms the basis of the estimated annual operating cost figures which FTC requires manufacturers of water heaters to disclose on an EnergyGuide label on each unit to assist consumers in making a purchasing decision.

Bock filed a petition for waiver from the DOE test procedure for water heaters on the grounds that the procedure yields materially inaccurate estimates of the energy consumed by its Model 32E oil-fired water heater. Bock states that the mass of the combustion chamber and heat exchanger of this water heater model is the highest of any water heater known to Bock.

Bock states that in actual home usage this water heater model exhibits recovery efficiencies of 81–83 percent but that the DOE test procedure yields a recovery efficiency value of 67 percent. Bock attributes the lower recovery efficiency value obtained from the DOE test procedure for this water heater model to the inappropriateness of the

DOE "cold start" recovery efficiency test methodology for evaluating the recovery efficiency of water heaters with large thermal masses.

To determine the recovery efficiency of electric, gas-fired and oil-fired storage water heater, the DOE test procedure requires that the mass of a water heater plus the water in its tank be in thermal equilibrium at a temperature of 70 °F at the beginning of the test. The water heater then heats the tank of water through a 90 °F temperature rise (i.e. to 160 °F). The amount of energy consumed by the water heater is measured directly. Recovery efficiency is computed as the quantity of heat energy imparted to the water in the tank divided by the measured energy consumption of the water heater.

Bock states that approximately 15 percent of the energy consumed by their Model 32E water heater under this test methodology is absorbed by the thermal mass of the combustion chamber and heat exchanger as they rise in temperature along with the water in the tank. The DOE test methodology effectively considers this absorbed energy as a loss which reduces the recovery efficiency value determined. Bock states that this is a loss that occurs only once in the life of a water heater—at the time of installation when it must heat a full tank of cold water—and that during subsequent operation in typical home usage this thermal mass remains at an elevated temperature near the thermostat set point of the water heater. Bock suggests three alternative test methodologies for DOE's consideration, each of which Bock considers will yield a more representative value of recovery effficiency.

In addition to comments for or against DOE granting Bock's request for a waiver, DOE invites comments on the efficacy of the alternative test methodologies identified by Bock or of any other test methodology which a commenter may wish to advance.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, D.C., May 23, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

February 5, 1985.

U.S. Department of Energy,
Office of Conservation and Renewable Energy, Mail Stop CE–113, 1000 Independence Ave., SW., Washington, D.C.
Attn: Assistant Secretary of Conservation and Solar Energy (DOE) *Petition for Waiver*

Gentleman: We are asking to waive the "cold start" method of deriving recovering efficiency on our Model 32E oil fired water heater. A cold start actually happens only once (on the initial installation) in the life-time of the water heater. That is to say that the entire heater, including water, is at ambient room temperature (70 °). During the rest of the life of the water heater the entire mass of the water heater is held somewhere near water temperature (which in the DOE test procedure is 160°F).[1]

Our water heater has the highest internal thermal mass of any heater we know and stores its heat for long periods of time after the burner cuts out—similar to the much studied Winnipeg Homes.

	Typical	Typical	Model 32E
Type of Fuel	Gas	Gas	Oil
Storage Capacity	30	50	30.
Input (Firing Rate in BTU's)	35,000	50,000	103,000
Weight of Heat Exchanger.	13 lbs	17 lbs	39 lbs.
Weight of Combustion Chamber.	0	0	0
Total Weight of Heater.	102 lbs	169 lbs	264 lbs.

When we start our Model 32E the first time, approximately 15% of the first heat up is lost bringing our thermal mass up to water temperature. Therefore, any test done on a cold start will show a very poor water production, however, any subsequent test done after that time will show recovery efficiencies within 3–5% of our combustion efficiencies which are 86%.

In other words, during actual home usage we would have recovery efficiencies of approximately 81–83% (which is the highest in the marketplace for an oil fired water heater) but, because of the "cold start" method of test we are only allowed to show recovery efficiencies of 67% thereby reducing our E_t and 1st hour rating.

I also propose that all other oil fired water heaters are more severely prejudiced by this method of test because each has significant inputs, therefore, combustion chamber mass and heat exchanger mass are larger than residential gas and electric type heaters (although not as great as our own).

ETL has rated our heater by the "cold start" method and has published its results in the GAMA Directory. Our competitors (especially Canadian) have used these figures to dispute our high recovery efficiencies and to effectively sell a less efficient (but lower thermal mass) heater is place of ours. This has materially disadvantaged our sales, especially on the Eastern corridor of the country.

ETL is about to test a Model 32PPPG which is a similar tank only fired with a power gas burner. This heater is also now rated as one of the most efficient gas heaters on the market. For ETL to rerate with the "cold start" method would essentially neutralize any and all claims for efficiency which we have been trying to make.

As an alternate to this type of test, I would suggest one of three methods, either:

1. A cyclical efficiency test such as is being proposed for heat pump water heaters.

2. A recovery efficiency test where the heater is allowed to heat thru 2 or 3 cycles and is then drained down and refilled with 70 °F water and allowed to heat the tank up to 160 °F.

3. An equilibrium flow-through type test where the heater is allowed to fire with water flowing until equilibrium conditions exist with incoming water at 70 °F ±2 °F and outlet water at 160 °F ±5 °F. The flow rate is then recorded and the computation

$$E_g = \frac{(160^\circ - 70^\circ \times 8.25 \times \text{Flow Rate}}{\text{Fuel Flow Rate} \times \text{BTU/Gal}} \times 100$$

is made.

Each of these tests require care to be taken if they are to give the proper efficiencies and each of these have their own drawbacks, however, any of the above will give a far closer approximation to actual "in field" efficiencies than with the current "cold start" method.

Thank you for your careful consideration to this matter.

Very truly yours,

Bock Water Heaters, Inc.

John C. Bock,

Vice President.

[FR Doc. 85–13847 Filed 6–7–85; 8:45 am]

BILLING CODE 6450–01–M

[1] The jacket and top may be near ambient, however, the tank where it is being heated is between 225° and 250° and the combustion chamber may be as high as 700 °–1000 °. Therefore, even if the water temperature has gone down, the unit mass is much closer to 160 °F than 70 °F now being evaluated and discussed.

Energy Conservation Program for Consumer Products; Petition for Waiver of Furnace Test Procedures From the Magic Chef Company, Inc. (F-014)

AGENCY: Conservation and Renewable Energy Office, Energy.

SUMMARY: Today's notice publishes a "Petition for Waiver" from The Magic Chef Air Conditioning Company, Inc. (Magic Chef) of Columbus, Ohio, requesting a waiver from the existing Department of Energy (DOE) test procedures for furnaces. Magic Chef manufactures residential and commercial heating appliances. The petition requests DOE to grant relief from the test procedure relating to the blower time delay specification for Magic Chef's Ultra series gas furnaces. Magic Chef seeks to test using a blower delay time of 20 seconds instead of the specified 1.5 minutes. DOE is soliciting comments, data, and information respecting the petition.

DATE: DOE will accept comments, data and information not later than July 10, 1985.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-014, Mail Stop CE-112, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station, CE-112, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 252-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station, GC-12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 252-9513

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, 92 Stat. 3266, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has amended the prescribe test procedures by adding 10 CFR 430.27, Petitions for Waiver, to allow the Assistant Secretary for Conservation and Renewable Energy temporarily to waive test procedures for a particular basic model. 45 FR 64108 (September 26, 1980). Waivers may be granted when one or more design characteristics of a basic model either prevent testing of the basic model according to the prescribed test procedures or lead to results so unpresentative of the model's true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

Magic Chef's petition seeks a waiver from the DOE test provisions that require a 1.5 minute time delay between the ignition of the burner and the starting of the circulating air blower. Instead, Magic Chef requests the allowance to test using a 20 second blower time delay when testing its Ultra series gas furnaces. Magic Chef states that since the 20 second delay is indicative of how the Ultra series gas furnaces actually operate and since such a delay results in an improvement in efficiency of approximately 0.5%, the waiver should be granted.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, D.C., May 23, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

March 14, 1985.

Assistant Secretary for Conservation & Solar Energy,

United States Department of Energy, 1000 Independence Ave. SW., Washington, D.C.

Re: Petition for Waiver

Gentlemen: This is a petition for waiver which is being submitted pursuant to Title 10 CFR 430.27. Waiver is requested from the condensing furnace test procedure found at Appendix N to Subpart B of Part 430 which requires a 1.5 minute time delay between burner on and circulating air blower on. This is a request for authorization to use a delay of 20 seconds instead of 1.5 minutes.

Magic Chef Air Conditioning manufactures several lines of condensing furnaces comprising the Ultra Series. In order to achieve maximum energy efficiency from these units, the circulating air blower is activated 20 seconds after burner on. This change of state occurs approximately when the stack temperature reaches thermal equilibrium and saves a substantial amount of heat energy. Under the Appendix N procedures, stack temperature in the Ultra Series models is allowed to overshoot thermal equilibrium and a substantial amount of heat energy escapes out the vent. This energy waste would never occur in an actual installation. If this petition is granted, the true blower on delay time (t-) would be used in the calculations.

The standard test procedures do not give Magic Chef credit for this energy savings which averages approximately 0.5%. A 0.5% improvement is a reduction of 5% of the energy loss and we are of the opinion that this 5% savings is significant and that the prescribed test procedures, by prohibiting Magic Chef Air Conditioning from taking credit for the saved energy, distort the facts so as to provide materially inaccurate comparative data.

Confidential test data is available which confirms the 5% waste energy savings claimed above. That data can be made available to you so long as it is protected by the Department of Energy from disclosure to others.

Please contact me for additional information.

Very truly yours,

Magic Chef Air Conditioning.

Charles G. Santangelo,

Vice President of Engineering.

[FR Doc. 85-13848 Filed 6-7-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 85-10-NG]

Czar Resources Inc.; Order Authorizing Import of Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Issuance of Opinion and Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on June 3, 1985, the ERA Administrator issued an opinion and order authorizing Czar Resources Inc. (Czar Inc.) to import up to 5,800 Mcf of Canadian natural gas per day, up to a total of 3.4 Bcf, for resale to Weyerhaeuser Company for use in its fiber manufacturing facility in Longview, Washington. The gas will be imported over a two-year period, on a best-efforts, interruptible basis at $2.75 (U.S.) per MMBtu, commencing on the date of first delivery.

The text of the opinion and order follow:

FOR FURTHER INFORMATION CONTACT:

Olga Ronkovich (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal

Building, Room GA-007, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-8116

Diane J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestall Building, Room 6E-042, 1000 Independence Avenue SW., Washington, D.C. 20585

Issued in Washington, D.C. on June 3, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

Department of Energy—Economic Regulatory Administration

[ERA Docket No. 85-10-NG; DOE/ERA Opinion and Order No. 82]

Czar Resources Inc.; Order Granting Authorization To Import Natural Gas From Canada

June 3, 1985.

I. Background

On April 8, 1985, Czar Resources Inc. (Czar Inc.) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to section 3 of the Natural Gas Act, to import on an interruptible, best-efforts basis, up to 5,800 Mcf per day of Canadian natural gas from Czar Resources Ltd. (Czar Ltd.). Czar Inc. is a wholly-owned U.S. subsidiary of Czar Ltd., a Canadian-based natural gas producer. Under this proposal, Czar Inc. would purchase a maximum volume of 3.4 Bcf over a peiod of two years, beginning on the date of first delievery, for resale to the Weyerhaeuser Company (Weyerhaeuser). The imported gas is intended to displace No. 6 fuel oil used at Weyerhaeuser's Longview, Washington, fiber manufacturing facility. Following the initial two-year term, the arrangement is to continue on a month-to-month basis until terminated by any party or until a maximum of 3.4 Bcf of gas has been delivered, whichever occurs first.

The contract specifies that the gas would enter the U.S. at a point near Sumas, Washington, where the existing pipeline facilities of Westcoast Transmission Company Limited interconnect with those of Northwest Pipeline Corporation (Northwest). Northwest would then transport the gas to the facilities of Cascade Natural Gas Corporation (Cascade) which would complete delivery to the Longview facility. At this time, no final transportation agreements ahve been reached by the parties.

The sales contract provided that during the first three months, the price Czar Inc. would pay Czar Ltd. for the gas would be $2.75 (U.S.) per MMBtu. The delivered cost to Weyerhaeuser during that period would be $3.70 (U.S.) per MMBtu. Thereafter, price redetermination may be made quarterly, subject to mutual agreement. On April 25, 1985, Czar Inc. amended its application to reflect an increase in the initial price it will pay Czar Ltd. to $2.84 (U.S.) per MMBtu. The amendment did not change the delivered price to Weyerhaeuser. According to the applicant, the change was needed to meet the Canadian government's current minimum floor price for short-term interruptible export sales.

In support of its application, Czar Inc. asserts that the imported gas would provide Weyerhaeuser with a cost-effective means of improving the manufacturing facility's operating economics because the offered gas supply can be delivered at a significant saving over Weyerhaeuser's cost for No. 6 fuel oil of approximately $4.25 (U.S.) per MMBtu.

According to the applicant, the import is in the public interest because it would (1) provide an environmental advantage compared to burning fuel oil; (2) reduce or eliminate Weyerhaeuser's requirement for fuel oil, thus freeing that oil for use by other domestic purchasers; (3) reduce reliance on imported foreign crude oil; (4) serve an incremental market which the existing transmission and distribution systems have hot been able to serve under similar competitive conditions; and (5) increase revenues for the transporting pipelines which will benefit their residential and industrial customers.

II. Interventions and Comments

The ERA issued a notice of the application on April 8, 1985, inviting protests, motions to intervene or comments to be filed by May 20, 1985.[1] The notice of the amendment was issued April 29, 1985.[2]

Motions to intervene were received from Northwest and Cascade. Northwest stated neither support for nor opposition to the proposed import in its motion to intervene. Cascade's motion contended that approval of the arrangement may not be in the public interest because it asserted that the application contained several factual misstatements and misrepresentations which prevent the ERA from adequately evaluating the arrangement without further information. This order grants intervention to Northwest and Cascade.

[1] 50 FR 15604, April 19, 1985.

[2] 50 FR 18911, April 29, 1985.

III. Decision

Czar Inc.'s application has been evaluated in accordance with the Administrator's authority to determine if the proposed import arrangement meets the public interest requirements of Section 3 of the Natural Gas Act. Under section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest."[3] The Administrator is guided by the DOE's policy relating to the regulation of natural gas imports.[4]

Under these policy guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

Cascade questioned in its motion to intervene whether the public interest would be served by approval of this arrangement since Czar Inc. had not yet made arrangements for transportation of this gas nor made any attempt to show how the proposal would qualify under current transportation tariffs and policies of the companies which might transport the gas. It is the ERA's position that contracts for transportation of imported gas do not represent a relevant issue in deciding whether to approve an import authorization, since the ERA only authorizes the import of the gas and not the means of transporting that gas to market. Clearly, the gas will not flow under any arrangement or authorization if all the supply and transportation contracts are not in place. Therefore, Cascade's request that the ERA require additional information from Czar Inc. concerning transportation arrangements is denied.

Cascade also is concerned that Czar Inc.'s arrangement would displace gas it and Northwest sell or intend to sell to Weyerhaueser, and stated that their captive customers would suffer if such displacement occurred. The policy of this agency is to promote competition, not restrict it, and the Czar Inc. arrangement offers new and positive competitive forces in this market place. Just as we encouraged Cascade to compete with Northwest in the gas import authorization granted to Cascade last year,[5] we encourage Czar Inc. to compete with Cascade and Northwest. Czar Inc. only intends to make its gas available to Weyerhaeuser, and no direct displacement is evident. It is for Weyerhaeuser to decide for itself what source of gas offers the best economic

[3] 15 U.S.C. 717b.

[4] 49 FR 6684, February 22, 1984.

[5] *See Cascade Natural Gas Corporation*, DOE/ERA Opinion and Order No. 66, issued December 10, 1984 (1 ERA ¶70,578).

choice, given the available options. The best efforts nature of the arrangement ensures that Weyerhaeuser does not have to take Czar Inc.'s gas if it is not the most competitively priced supply available.

Czar Inc.'s import arrangement fully comports with the public interest test established in the DOE's policy guidelines. The volumes will be imported on a best-efforts, interruptible basis. No minimum purchases provision or take-or-pay obligation is included in the contract. The flexibility of the import arrangement, along with the provisions for adjustment of the purchase price contained in the amended gas purchase contract, ensure that the gas will only be imported when the price to Weyerhaeuser is competitive. The pricing flexibility and the other contract terms and conditions, taken together, demonstrate that the import arrangement will be sufficiently flexible to allow Czar Inc. to respond to its market over the length of the contract.

The gas import policy guidelines recognize that the need for an import is a function of competitiveness. Under the competitive arrangement described above, it is presumed Weyerhaeuser will purchase the gas only to the extent it needs such volumes for its manufacturing facility and only to the extent that they are priced competitively. The security of the import supply is not a major issue because the gas is to be purchased on a best-efforts, interruptible basis.

After taking into consideration all information in the record of this proceeding, I find that the authorization requested by Czar Inc. is not inconsistent with the public interest and should be granted.[6]

Order

For the reasons set forth above, pursuant to section 3 of the Natural Gas Act, it is ordered that:

A. Czar Resources Inc.(Czar Inc.) is authorized to import up to 5,800 Mcf of Canadian natural gas per day during the 24-month period beginning on the date of first delivery, and to continue thereafter on a month-to-month basis until terminated by either party or until a maximum of 3.4 Bcf has been imported, whichever occurs first, in accordance with the provisions established in the amended contract submitted as part of the application in this docket.

B. Czar Inc. shall notify the ERA in writing of the date of first delivery within two weeks after deliveries begin.

C. Czar Inc. shall file with the ERA the terms of any renegotiated price that may become effective after the initial 3-month period within two weeks of its effective date.

D. Czar Inc. shall file with the ERA in the month following each calendar quarter, quarterly reports showing, by month, the quantities of natural gas imported under this authorization, and the price per MMBtu paid for those volumes.

E. The motions to intervene by Northwest Pipeline Corporation and Cascade Natural Gas Corporation are hereby granted, subject to the administrative procedures in 10 CFR Part 590, provided that their participation shall be limited to matters affecting asserted rights and interests specifically set forth in their motions to intervene and not herein specifically denied, and that the admission of these intervenors shall not be construed as recognition that they might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., June 3, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-13855 Filed 6-7-85; 8:45 am]

BILLING CODE 6450-01-M

[6] Because the proposed importation of gas will use existing pipeline facilities, DOE has determined that granting this application clearly is not a Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and therefore an environmental impact statement or environmental assessment is not required.

Federal Energy Regulatory Commission

[Docket Nos. CP85-399-000, et al.]

Natural gas certificate filings; ANR Pipeline Co. et al.

June 3, 1985.

Take notice that the following filings have been made with the commission:

1. ANR Pipeline Company

[Docket No. CP85-399-000]

Take notice that on March 28, 1985, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP85-399-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing ANR to transport natural gas for Anchor Glass Container Corporation (Anchor) and to construct and operate minor pipeline tap facilities necessary to deliver gas for the account of Anchor, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR requests authority to transport up to 3,000 dt equivalent of gas per day on a best efforts basis for Anchor pursuant to a transportation agreement with Anchor dated October 9, 1984, as amended. ANR states that the gas to be transported would be purchased by Anchor from ANR Gathering Company (Gathering), as seller or as seller's agent, pursuant to a gas sales agreement dated April 25, 1984, as amended, and which provides that Gathering would sell up to 6,500 dt equivalent per day to Anchor. It is explained that ANR would receive the gas at various points of interconnection between ANR and Gathering and/or ANR and others in Oklahoma, Texas and Kansas and would then transport and deliver the gas to Pressure Transport, Inc. (PTI), for the account of Anchor at tap facilities which it proposes to construct and operate on its pipeline system in McHenry County, Illinois, and/or in Kenosha County, Wisconsin. ANR estimates that the cost of the proposed tap facilities will not exceed $10,000.00 and for which Anchor would reimburse ANR.

Upon PTI's receipt of Anchor's gas from ANR, PTI would transport the gas via pressurized truck/tube trailers to Anchor's Gurnee, Illinois, glass plant, it is stated. ANR indicates that Anchor would utilize the gas to manufacture glass containers for the maintenance of food quality, a high priority end-use.

The initial term of the transportation agreement is one year and year-to-year thereafter. ANR states that it would charge Anchor 31.1 cents per dt equivalent for gas delivered at McHenry County, Illinois, and 32.9 cents per dt for gas delivered at Kenosha County, Wisconsin; and any volumes received by ANR would be reduced by 9 percent as compensation for compressor fuel and lost and unaccounted-for gas.

Comment date: June 24, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. ANR Pipeline Company

[Docket No. CP85-495-000]

Take notice that on May 7, 1985, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP85-495-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a firm natural gas transportation service for Texas Gas Transmission Corporation (TGT), all as more fully set forth in the application

which is on file with the Commission and open to public inspection.

ANR states that it proposes to transport up to 75,000 Mcf of natural gas per day (contract demand) on a firm basis for TGT pursuant to a transportation agreement date February 7, 1985. ANR states that it would receive natural gas, up to the contract demand, that TGT has acquired in West Cameron Area Blocks 293, 294, 299, and 300 at the manifold platform in West Cameron Area Block 167. ANR states that it would transport and deliver thermally equivalent volumes, less 2.2 percent retained for fuel and lost and unaccounted-for gas, to TGT at the existing interconnection of the pipeline systems of ANR and TGT near Eunice, Louisiana. It is indicated that the term of the proposed firm service is for an initial term of fifteen years from first deliveries and year-to-year thereafter, unless cancelled by either party with six months prior written notice. It is explained that ANR is currently providing a "best-efforts" service on behalf of TGT by transporting the subject gas pursuant to Subpart G of Part 284 of the Commission's Regulations.

As consideration for the proposed transportation service, it is stated that TGT would pay ANR a monthly demand charge of $3.12 per Mcf of contract demand.

Comment date: June 24, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Equitable Gas Company, a Division of Equitable Resources, Inc.

[Docket No. CP85-507-000]

Take notice that on May 13, 1985, Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP85-507-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation for a period of three years from the date of initial deliveries by Hydrocarbon Energies, Inc. (HE), and year to year thereafter, of up to 500 Mcf of natural gas per day for HE from points along Equitable's pipeline system in West Virginia for redelivery at existing interconnections with the pipeline system of Texas Eastern Transmission Corporation (Tetco) and the construction and operation of several taps and associated measuring and regulating facilities to receive the gas from HE. It is currently anticipated that three meter installations will be required at a cost of $2,560.00. HE will reimburse Equitable its costs of constructing such taps and appurtenant facilities. For the service proposed, HE will pay Equitable 15.5¢ per Mcf of gas transported exclusive of transportation shrinkage of 2 percent.

Comment date: June 24, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP85-470-000]

Take notice that on April 26, 1985, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-470-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of The Dow Chemical Company (Dow) under the certificate issued in Docket No. CP84-451-000 pursuant to Section 7 of the Natural Gas Act, all as more fully described in the request which is on file with the Commission and open for public inspection.

It is stated that Dow has arranged to purchase certain volumes of gas from Petrolane-Texas Gas Service, Inc. (Petrolane), for use as boiler fuel and in direct fire processing at Dow's Midland, Michigan, plant. In order for Dow to receive its gas, it is explained that Dow has entered into a transportation agreement with Panhandle and also Michigan Gas Storage Company (Storage) dated March 15, 1985, as amended April 11, 1985. It is indicated that Panhandle would receive up to 13 billion Btu of natural gas from Petrolane (for Dow's account) at various points in Major, Woods, and Woodward Counties, Oklahoma. Panhandle would then transport on an interruptible basis and redeliver equivalent quantities, less a 4 percent reduction for fuel use, to Storage in Oakland County, Michigan. Storage, in turn, would transport and deliver such gas to Consumers Power Company (Consumers) for Dow's account and Consumers would make ultimate delivery to Dow at the Midland plant.

It is stated that Panhandle proposes to transport 3 billion Btu of gas on an average day and 1.09 trillion Btu of gas on an annual basis on behalf of Dow for a term of 6 months and 2 successive one-month terms unless the Commission terminates the authorizations or either party terminates the agreement on 30 days written notice. Panhandle states that it would charge its effective Rate Schedule OST rate which is currently 42.0 cents plus 1.24 cents GRI surcharge per MMBtu redelivered.

Panhandle also requests flexible authority to add or delete receipt/delivery points associated with the sources of gas acquired by the end user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Panhandle will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources would only be obtained to constitute the transportation quantities herein and not increase these quantities.

Comment date: July 18, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. Transcontinental Gas Pipe Line Corporation, ANR Pipeline Company

[Docket No. CP79-3-017]

Take notice that on May 6, 1985, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, and ANR Pipeline Company (ANR), 500 Rennaissance Center, Detroit, Michigan 48243, filed in Docket No. CP79-3-017 a petition to amend the order issued April 4, 1979, in Docket No. CP79-3, as amended, pursuant to Section 7 of the Natural Gas Act, so as to authorize ANR to transport all gas made available by Transco at its Mayfield West field, Beckham County, Oklahoma, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that by order issued April 4, 1979, as amended, they were granted authorization to transport and exchange natural gas in accordance with the provisions of a gas transportation and exchange agreement, as amended (agreement).

Petitioners state that pursuant to the terms of the agreement, Transco delivers or causes to be delivered to ANR natural gas from certain wells located in the Mayfield West field, Beckham County, Oklahoma, which wells are specifically set out in Article I of the agreement. ANR redelivers thermally equivalent exchange volumes to Transco at the points of redelivery identified in Article V of the agreement.

Petitioners state that pursuant to a similar provision in Article II of the agreement, ANR delivers gas to Transco at receipt points in Jefferson Davis and Covington Counties, Mississippi, and Transco agrees to take receipt of additional gas which ANR is purchasing from East Cameron Block 38, offshore Louisiana, ANR being responsible for having such gas delivered to Transco at a point of interconnection between the

Vermilion 22 pipeline (jointly owned by Transco, Florida Gas Transmission Company and Sea Robin Pipeline Company) and Transco's central Louisiana gathering system at Pecan Island, Vermilion Parish, Louisiana (East Cameron 38 point of receipt). Transco redelivers thermally equivalent exchange volumes to ANR at the points of redelivery identified in Article V of the agreement.

It is stated that Petitioners use their best efforts to keep in balance the cumulative quantities of gas exchanged under the agreement, and any imbalance of exchange deliveries is eliminated by an appropriate adjustment of gas deliveries at the redelivery point located at the tailgate of Mobil Oil Corporation's Cameron Meadows processing plant located in Cameron Parish, Louisiana, where both Transco and ANR take gas deliveries from others. It is also stated that to the extent that volumes of gas which Transco receives in Mississippi and at the East Cameron 38 point of receipt are in excess of the volumes which ANR receives, Transco would transport these excess volumes, by displacement, to ANR at the points of redelivery.

Petitioners further state that Transco has obtained the right to purchase from Texaco Inc. quantities of gas from the Green Estate No. 2 Well and the Ellis No. 3–33 Well in the Mayfield West field. Also, by letter amendment dated August 20, 1984, Petitioners added to Article I of the agreement such additional wells from which ANR would receive gas from Transco. By the subject petition, Petitioners request that the certificate issued in Docket No. CP79–3, as amended, be further amended to authorize ANR to transport all gas purchased by Transco from the Green Estate No. 2 Well and the Ellis No. 3–33 Well in the Mayfield West field.

Comment date: June 24, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP85–498–000]

Take notice that on May 8, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85–498–000 an application pursuant to section 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon the lease and operation of 17 miles of 6-inch pipeline, the operation thereof and metering facilities presently located on same lease line, and to abandon and remove present metering facilities located at a second meter station nearby, and to construct and operate a master meter station at the existing site of the second meter station in Escambia County, Alabama, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that the request for abandonment authorization is made following a request from three utility customers, the City of Brewton (Brewton), the Town of Flomaton (Flomaton), and the Utility Board of the City of Atmore (Atmore), Alabama, that United construct and operate a master meter station to allow the delivery of the total combined volumes of 8731 Mcf per day for the three above communities through a single delivery point.

It is indicated that United is presently delivering gas to the above communities at two nearby locations, pursuant to two service agreements. However, these communities have agreed to realign these deliveries so that all volumes under both agreements would be delivered through a master meter station, it is stated. United states that the rearrangements of deliveries would improve its operating efficiency as well as the service to the above customers. United also states that the present facilities at the first station would no longer be needed once the new station is completed and that present facilities at the second station are inadequate for measuring the total volumes of gas to be hereinafter delivered.

United has also stated that it would continue to have separate agreements with Atmore and Brewton-Flomaton and that the proposal would not change the maximum daily quantity of gas already established under these service agreements.

Cost of removal of the facilities to be abandoned and construction and operation of the master station is estimated at $66,247. It is stated that Atmore and Brewton have agreed to reimburse United for a portion of such cost.

Comment date: June 24, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) 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.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the 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. 85–13955 Filed 6–7–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-35-000]

Bay State Gas Co. Petition for Staff's Adjustment and Interim Relief

June 5, 1985.

On May 17, 1985 Bay State Gas Company (Bay State), 120 Royall Street Canton Massachusetts, 02021 filed with the Federal Energy Regulatory Commission (Commission) a petition under section 206 (d) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3346(d) (1982) and Rule 1101, *et seq.* of the Commission's regulations, 18 CFR 385.1101. Bay State seeks an order from the Director of the Office of Pipeline and Producer Regulations (Director) exempting from incremental pricing certain gas sales made by Bay State to seven non-exempt industrial plants. Additionally, Bay State requests interim relief under Rule 1113(h) of the Rules of Practice and Procedure in order to prevent irreparable injury.

Bay State's pricing provisions for natural gas is based upon customers' alternative fuel costs. In the past, the price for such natural gas has been in excess of the Commission's prescribed alternate fuel price ceiling and thus no incremental pricing surcharge had been levied. However, in May, 1985, the alternate fuel price ceiling for Bay States area climbed to $4.40 per MMBtu, while the prevailing alternate fuel price actually available was as low as $3.97 per MMBtu. Under incremental pricing regulations, a surcharge would then be levied upon Bay State's seven customers in order to bring their gas costs up to the level of the alternative fuel price ceiling. As a result, this surcharge would cause the gas costs to increase above the price of alternative fuel actually available to Bay State's customers. Furthermore, all seven customers have the capability to burn fuel oil and Bay State fears that the imposition of incremental surcharges will result in an immediate switch to that alternate source of fuel.

Bay State asserts, pursuant to Rule 1108, that the loss of these industrial sales will cause special hardship, inequity or unfair distribution of burden, upon Bay State's residential gas customers. Under the terms of Bay State's Massachusetts Cost of Gas Adjustment Clause (CGA), all profits from all interruptible sales are credited to the system cost of gas and then these credits reduce the cost of gas sold to high priority customers. During the twelve month period ending March, 1985, approximately $3,375,000 from sales to these seven non-exempt customers were credited under the CGA provision resulting in an average rate reduction during that period of $0.11 per MMBtu. As a direct result of the incremental price surcharge, Bay State's high priority customers will be irreparably harmed by increases in their monthly cost of gas.

In addition, Bay State requests interim relief pursuant to Rule 1113 of the Commission's Regulations. Bay State believes that interim relief is warranted as the non-exempt customers are likely to switch immediately to the lower priced alternate fuels before the merits of Bay State's request can be considered.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must make a motion to intervene in accordance with the provisions of Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13929 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-477-000]

Consolidated Fuel Supply, Inc.; Application for Blanket Limited-Term Certificate of Public Convenience and Necessity, Limited Partial Abandonment Authorization and Declaration of Limited Jurisdiction

June 5, 1985.

Take notice that on May 28,1985, Consolidated Fuel Supply, Inc. ("Consolidated") 888 South Greenville Avenue, Suite 100, Richardson, Texas, 75081, filed an application pursuant to Sections 4 and 7 of the Natural Gas Act ("NGA"), 15 U.S.C. 717c, 717f, and provisions of 18 CFR Part 157, for blanket limited-term certificate of public convenience and necessity authorizing Consolidated to engage in a limited-term spot sales marketing program hereinafter referred to as the Consolidated Fuel Program, as fully set forth in the application on file with the Federal Energy Regulatory Commission ("Commission") and available for public inspection.

Approval of the application would: (1) Authorize sales of natural gas for resale in interstate commerce; (2) permit limited-term partial abandonment of certain natural gas sales; (3) confer pregranted abandonment authorization for sales of natural gas pursuant to the requested certificate; (4) authorize transportation of natural gas by interstate pipeline companies able and willing to participate in the Consolidated Fuel Program; and (5) confer pregranted abandonment authorization for the transportation service allowed under the requested certificate. Consolidated also requests the Commission to declare that with respect to Consolidated and its activities, the Commission will only assert NGA jurisdiction over jurisdictional transactions not otherwise exempt from the NGA.

Consolidated proposes to sell natural gas qualifying for the sections 102, 103, 107 and 108 rates under the Natural Gas Policy Act of 1978 ("NGPA"), 15 U.S.C. 3301 *et seq.* Only contractually committed gas will be sold under the Consolidated Fuel Program. Consolidated or participating producers will secure from the purchasers temporary releases of "surplus" gas in order to meet market demand for natural gas with spot sales. Releasing producers will be absolved from take-or-pay liability for any volumes of gas released and sold under the Consolidated Fuel Program. Transportation arrangements for the released gas will be made on a case-by-case basis.

Any person desiring to be heard or to make protest with reference to this application should on or before June 21, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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 a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless the Applicant is otherwide advised, it will be unnecessary for Applicant to appear or to be represented at a hearing in this proceeding.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13930 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-149-000]

East Tennessee Natural Gas Co.; Filing of Changes in Rates

June 5, 1985.

Take notice that on May 31, 1985, East Tennessee Natural Gas Company (East Tennessee) tendered for filing changes to Original Volume No. 1 of its FERC Gas Tariff to be effective on July 1, 1985, consisting of the following revised tariff sheets:

Twelfth Revised Sheet No. 4
First Revised Sheet Nos. 120, 261 and 262
Third Revised Sheet Nos. 121 and 124

The changes would increase non-gas revenues from jurisdictional sales by $5,601,939 based on the test period consisting of the twelve months ended February 28, 1985, adjusted for known and measurable changes through November 30, 1985. The changes also incorporate revisions to the tariff that are necessary to conform to East Tennessee's method of allocating demand costs on the basis of contract demands and to update its Index of Purchasers to reflect authorized revisions to various of its customers' contract demands.

East Tennessee states that the increased rates are required to reflect a decline in sales volumes, increased plant and related expenses, changes in the cost of materials, supplies, wages and services, taxes, fuel and other costs required to operate and maintain its pipeline system, and a claimed overall return of 15.05%.

East Tennessee's filing also incorporates the cancellation of its CSS and CPR Rate Schedules effective June 1, 1984 and July 1, 1985, respectively, as reflected on the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

CSS

First Revised Sheet Nos. 49 and 204

CPR

First Revised Sheet Nos. 26, 37, 39, 42, 117, 119, 125, 130, 132 and 192
Second Revised Sheet Nos. 1, 44, 116, 133 and 194
Fourth Revised Sheet No. 122

East Tennessee states that such tariff sheets constitute its Notice of Cancellation of the CSS and CPR Rate Schedules and those tariff revisions necessary to delete all references to such rate schedules.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 12, 1985. 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. 85-13931 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-3-2-000 and TA85-3-2-001]

East Tennessee Natural Gas Co., Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 5, 1985

Take notice that on May 31,1985, East Tennessee Natural Gas Company (East Tennessee) tendered for filing Eleventh Revised Sheet No. 4 and Ninth Revised Sheet Nos. 5 and 6 to Original Volume No. 1 of its FERC Gas Tariff, to be effective July 1, 1985.

East Tennessee states that the purpose of these sheets is to reflect PGA rate adjustments based on its anticipated cost of purchased gas and reflects (1) a rate change filed by Tennessee Gas Pipeline Company, a division of Tenneco Inc. (Tennessee), and (2) purchases from various local producer-suppliers. East Tennessee states that Tennessee filed in Docket No. TA85-2-9 alternate tariff sheets and that East Tennessee's filing is based on the lower level of Tennessee's rates. East Tennessee states that if the Commission or Tennessee places higher rates into effect, East Tennessee may revise its rates accordingly.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

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, Washington, D.C. 20426, in accordance with Rules 208 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 12, 1985. 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. 85-13932 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-476-000]

Energy Marketing Exchange, Inc. (Ener-Gen Program); Application for Blanket Certificate and Pre-Granted Abandonment Authorization to Implement Ener-Gen Program

June 5, 1985.

Take notice that on May 29, 1985, Energy Marketing Exchange, Inc. (EME), P.O. Box 6060, Bridgewater, NJ 08807, filed an application pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717c and 717f, and the provisions of 18 C.F.R. Parts 157 and 295, for a blanket certificate of public convenience and necessity authorizing EME to market natural gas to "qualifying cogeneration facilities" under its program, hereinafter referred to as ENER-GEN, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

EME states that under ENER-GEN, it proposes to sell natural gas qualifying for the Section 102, 103 or 107 rate under the Natural Gas Policy Act of 1978 to "qualifying cogneration facilities" as defined under Section 3(18)(B) of the Federal Power Act, as amended by section 201 of the Public Utility Regulatory Policies Act of 1978, and as further defined under Part 292 of the Commission's regulations, 18 CFR Part 292. EME states that each sale under the program would be for a term of up to ten (10) years, and will be limited to cogeneration facilities which are placed into service on or after the date the Commission grants the requested authorizations, or which currently use fuel oil or other alternative energy sources.

Approval would: (1) Authorize the transportation of natural gas by interstate pipelines able and willing to participate in (10) years; (2) authorize the transportation of natural gas by local distribution companies (including Hinshaw pipelines) able and willing to participate, ENER-GEN, for a term of up to ten (10) years; (3) confer pre-granted abandonment authorization for the transportation allowed under the requested certificate; and (4) authorize

the transportation of natural gas by intrastate pipelines participating in ENER-GEN for a term of up to ten (10) years.

Any person desiring to be heard or to make any protests with reference to said application should on or before June 19, 1985, 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 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 a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

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. 85-13933 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-3-34-000 and TA85-3-34-001]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

June 5, 1985

Take notice that on May 29, 1985, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77001 tendered for filing the following tariff sheets to its F.E.R.C. Gas Tariff to be effective June 1, 1985.

First Revised Volume No. 1

4th Revised Sheet No. 8

Original Volume No. 2

27th Revised Sheet No. 128

The proposed change reflects a decrease of 1.786¢/therm in FGT's Rate Schedule G and I and .51¢/Mcf in Rate Schedule T-3. In order to implement FGT's out-of-cycle PGA rate decrease, FGT has requested such Commission waivers as may be necessary to approve its filing effective June 1, 1985.

Copies of the filing were served on FGT's jurisdictional customers and interested State Commissions.

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, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 12, 1985. 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. 85-13934 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-152-000]

Inter-City Minnesota Pipelines Ltd., Inc.; Proposed Rate Change

June 5, 1985.

Take notice that on May 31, 1985, Inter-City Minnesota Pipelines Ltd., Inc. (Minnesota Pipelines) tendered for filing pursuant to Section 4 of the Natural Gas Act and § 154.63 of the Commission's regulations the following:

Twenty-fourth Revised Sheet No. 4, superseding Substitute Twenty-third Revised Sheet No. 4 to Minnesota Pipelines' FERC Gas Tariff, Original Volume No. 1;

Third Revised Sheet No. 11, superseding Substitute Second Revised Sheet No. 11 to Minnesota Pipelines' FERC Gas Tariff, Original Volume No. 2;

Third Revised Sheet No. 12, superseding Substitute Second Revised Sheet No. 12 to Minnesota Pipelines' FERC Gas Tariff, Original Volume No. 2.

With the above, Minnesota Pipelines has filed supporting testimony and exhibits. Minnesota Pipelines has requested that the proposed rate increase be permitted to become effective July 1, 1985. It accordingly requests that the rates be permitted to become effective, subject to refund, on that date and that the Commission waive suspension or, in the alternative, limit the suspension to one day in order that the July 1 date may be permitted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 12, 1985. 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. 85-13935 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-628-004]

Kansas Gas and Electric Co.; Refund Report

June 4, 1985.

Take notice that on May 3, 1985, Kansas Gas and Electric Company (KG&E) resubmitted its refund report of November 21, 1984. KG&E resubmitted this filing because the Commission had no record that this filing had been tendered to the Commission.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before June 10, 1985. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13945 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-525-000]

Kansas Power and Light Co.; Filing

June 5, 1985.

The filing Company submits the following:

Take notice that on May 20, 1985, Kansas Power and Light Company (KPL) tendered for filing Amendment No. 10 to the General Participation Agreement of Mokan Power Pool members.

KPL states that Amendment No. 10 is to outline certain procedures and qualifications by which a Mokan Power Pool member may purchase or sell capacity and to further qualify membership criteria.

KPL further states that the following are presently under the General Participation Agreement with the following FPC Rate Schedule Numbers:

Kansas City Power & Light Company—Rate Schedule FPC No. 32

Missouri Public Service Company—Rate Schedule FPC No. 8

The Empire district Electric Company—Rate Schedule FPC No. 73
Kansas Gas and Electric Company—Rate Schedule FPC No. 94
The Kansas Power & Light Company—Rate Schedule FPC No. 7
Centel Corporation-Western Power—Rate Schedule FPC No. 53
St. Joseph Light & Power Company—Rate Schedule FPC No. 17
Midwest energy, Inc.
Sunflower Electric Cooperative, Inc.
Board of Public Utilities of the City of Kansas City, Kansas
City Power & Light Department of the City of Independence, Missouri

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, NE., Washington, D.C. 20426, in accordance with the rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1985. 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. 85-13946 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-523-000]

Kansas Power and Light Co.; Filing

June 5, 1985.

The filing Company submits the following:

Take notice that on May 20, 1985, Kansas Power and Light Company (KPL) tendered for filing a newly executed renewal contract dated May 1, 1985, with the City of Marion, Kansas for wholesale service to that community. KPL states that this contract permits the City of Marion to receive service under rate schedule WSM-12/83 designated Supplement No. 10 to R.S. FERC No. 173. The proposed effective date is July 1, 1985. The proposed contract change provides essentially for the ten year extension of the original terms of the presently approved contract.

KPL requests an effective date of July 1, 1985, and therefore requests waiver of the Commission's notice requirements.

KPL states that copies of the filing have been mailed to the City of Marion and the State Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulation Commission, 825 North Capitol Street, N.E., Washington, D.C. 20246, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1985. 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. 85-13947 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-5-5-000 and TA85-5-5-001]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 5, 1985.

Take notice that on May 31, 1985, Midwestern Gas Transmission Company (Midwestern) filed Fourteenth Revised Sheet No. 5 and Ninth Revised Sheet No. 7 to Original Volume No. 1 of its FERC Gas Tariff, to be effective July 1, 1985.

Midwestern states that the purpose of the filing is to reflect: (1) PGA rate adjustments for its Southern System based on rate changes filed by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), and (2) a change in Midwestern's commodity rate pursuant to the Stipulation and Agreement (May 24, 1983) in Docket No. CP82-397. Midwestern states that Tennessee filed in Docket No. TA85-2-9 alternate tariff sheets and that Midwestern's filing is based on the lower level of Tennessee's rates. Midwestern states that if the Commission or Tennessee places the higher rates into effect, Midwestern may revise its rates accordingly.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

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, Washington, D.C. 20426, in accordance with Rules 208 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 12, 1985. 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. 85-13938 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-359-004]

Montana Power Co.; Refund Report

June 5, 1985.

Take notice that on May 20, 1985, Montana Power Company (Montana) submitted for filing a refund report pursuant to the Commission's letter order dated April 3, 1985.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before June 12, 1985. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13948 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-150-000]

Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

June 5, 1985.

Take notice that on May 31, 1985, Natural Gas Pipeline Company of America (Natural) tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1 and Second Revised Volume No. 2 to become effective July 1, 1985.

Natural tates that the purpose of the filing is to provide for the level of rates and charges required to recover its increased operating costs. When compared to the settlement rates currently in effect at Docket No. RP83-68, the proposed change in rates shows a revenue increase of approximately $106.5 million.

In addition to reflecting the variations in operating costs, the proposed sales rates reflect the effect of a Modified Fixed-Variable rate design, and a representative level of transportation revenues in lieu of the current procedure for crediting such revenues to the Deferred Purchased Gas Cost Account.

Also included are tariff sheets to incorporate a minimum commodity bill provision, a Stand-by Charge, a transportation cost adjustment mechanism, a tariff provision to recover carrying costs associated with variations in payments for undelivered gas costs, and tariff provisions to provide for onshore and offshore transportation of gas by Natural for any shipper which executes a transportation contract wherein Natural agrees to transport natural gas for such shipper.

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, NE., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before June 12, 1985. 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. 85-13937 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-517-000]

New York State Electric & Gas Corp.; Filing

June 3, 1985.

The filing Company submits the following:

Take notice that on May 17, 1985, New York State Electric & Gas Corporation (NYSEG), tendered for filing proposed changes in its FERC Rate Schedules Nos. 27, 28, 30, 33 and 35. It is estimated that the proposed changes would increase revenues from jurisdictional sales and service by about $29,100 based on the 12 month period ended February 28, 1985.

After extensive hearings in Case No. 28824, "New York State Electric & Gas Corporation Electric Rates", and pursuant to Opinion 85-8 issued by the Public Service Commission of the State of New York on April 9, 1985, NYSEG filed revised leaves to Schedule PSC No. 115—Electricity, which the above Opinion allowed to become effective April 15, 1985. Rate Schedule PSC No. 115 is incorporated in the previously noted FERC schedules.

NYSEG requests an effective date of April 15, 1985, and therefore requests waiver of the Commission's notice requirements.

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, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1985. 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. 85-13949 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-151-000]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 5, 1985.

Take notice that Northern Border Pipeline Company (Northern Border) on May 31, 1985, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1. Northern Border projects that the proposed changes would increase jurisdictional revenues by $26.5 million during the first year that such changes are in effect.

By this filing, Northern Border is proposing to increase its Operation Phase Rate, which is its allowed rate of return on equity, to 16.5 percent from the currently effective rate of 13 percent. In addition, Northern Border is proposing to delete its cash working capital allowance in Rate Base under Subsection 4.83(b) set forth in Rate Schedule T-1.

Northern Border proposes an effective date for this feeling of July 1, 1985. Copies of this filing have been sent to all of Northern Border's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC. 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 motions or protests should be filed on or before June 12, 1985. 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. 85-13938 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-396-002]

Northern Indiana Public Service Co.; Refund Report

June 5, 1985.

Take notice that on May 13, 1985, Northern Indiana Public Service Company submitted for filing a refund report pursuant to the Commission's order dated April 3, 1985.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, on or before June 12, 1985. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13950 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-687-002]

Pacific Power & Light Co.; Compliance Filing

June 5, 1985.

Take notice that on May 15, 1985, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp submitted for filing a compliance report pursuant to the Commission's order dated April 17, 1985.

Any person desiring to be heard or to protest said filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before June 12, 1985. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13951 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-2-6-000 and TA85-2-6-001]

Sea Robin Pipeline Co.; Filing of Revised Tariff Sheets

June 5, 1985.

Take notice that on May 31, 1985, Sea Robin Pipeline Company (Sea Robin) tendered for filing Thirty-Ninth Revised Sheet No. 4, Nineteenth Revised Sheet No. 4-A and Sixth Revised Sheet No. 4-B to its FERC Gas Tariff, Original Volume No. 1. These tariff sheets and supporting information are being filed pursuant to the Purchased Gas Cost Adjustment provision set out in Sections 1 and 3 of Sea Robin's Tariff.

Sea Robin states that these revised tariff sheets and supporting data are being mailed to Sea Robin's jurisdictional customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 12, 1985. 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. 85-13939 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-6-002]

Sea Robin Pipeline Co.; Filing of Revised Tariff Sheets

June 5, 1985.

Take notice that on May 31, 1985, Sea Robin Pipeline Company (Sea Robin) tendered for filing Twenty-Second Revised Sheet Nos. 127-D and 135-C to its FERC Gas Tariff, Original Volume No. 2. These tariff sheets and supporting information are being filed pursuant to the Purchased Gas Cost Adjustment provision set out in Sections 4 and 5 of Sea Robin's Tariff.

Sea Robin states that these revised tariff sheets and supporting data are being mailed to Sea Robin's jurisdictional customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 12, 1985. 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. 85-13940 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-524-000]

Southern California Edison Co.; Filing

June 5, 1985.

The filing Company submits the following:

Take notice that on May 20, 1985, Southern California Edison Company ("Edison") tendered for filing an agreement entitled "Edison-Burbank Economy Energy Agreement" (Agreement), which has been executed by Edison and the City of Burbank, California ("Burbank").

Edison states that under the terms and conditions of the Agreement, Edison will purchase/sell economy energy to Burbank to make more efficient use of their respective electrical systems.

Edison requests an effective date of 60 days after the receipt of filing by the Commission.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Burbank, California.

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 Capital Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1985. 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. 85-13952 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-424-000 and ER85-425-000]

Southwestern Electric Power Co.; Order Accepting for Filing and Suspending Rates, Denying Motion to Reject, Denying Waiver of Notice Requirements, Noting Intervention, Consolidating Dockets, and Establishing Hearing Procedures

Issued: June 5, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On April 10, 1985, Southwestern Electric Power Company (SWEPCO) tendered for filing a proposed increase in rates to Northeast Texas Electric Cooperative, Inc., (NTEC) and the City of Hope, Arkansas (Hope), in Docket Nos. ER85-424-000 and ER85-425-000, respectively.[1] SWEPCO provides service to NTEC and Hope pursuant to firm power agreements which provide for formulary rates. The formula provides for an annual true-up to recompute the prior year's rate based on actual cost data, including SWEPCO's actual earned return. The rate developed under the true-up also becomes the interim rate to be charged until the next true-up. Based on its 1984 Form 1 data, SWEPCO proposes to increase the common equity component of its formulary rates from 15.7% to 18.75% for Hope and 18.71% for NTEC.[2] SWEPCO's filings would increase annual revenues by about $2 million. The agreements provide that the revised rates will become effective on the first day of the month following the commercial operation date of SWEPCO's Pirkey Unit No. 1. SWEPCO states that Pirkey Unit No. 1 was placed into commercial operation on January 3, 1985, and, therefore, requests waiver of the notice

[1] See Attachment for rate schedule designations.

[2] Presumably, the common equity component for NTEC is slightly lower due to a provision in its contract excluding costs associated with SWEPCO's new Pirkey Unit No. 1.

requirements to permit an effective date of February 1, 1985.

Notice of the filings was published in the **Federal Register** [3] with comments due on or before May 6, 1985. Hope filed a timely motion to intervene. Hope requests rejection of the filing on the basis that: (1) The filing improperly recovers costs associated with construction work in progress (CWIP); and (2) the proposed 18.75% equity return is unjust and unreasonable.[4]

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motion to intervene serves to make Hope a party to this proceeding.

Notwithstanding Hope's allegation to the contrary, SWEPCO's formula rate does not include CWIP costs, and the filing substantially complies with the Commission's filing requirements. Therefore, we shall deny Hope's motion to reject SWEPCO's filing.

Our review of SWEPCO's submittal indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶61,189 (1982), we explained that where our preliminary examination indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, we would generally impose a maximum suspension. Here, our examination suggests that the proposed rates may yield substantially excessive revenues. We shall therefore suspend SWEPCO's rates for five months.

As mentioned, SWEPCO requests waiver of the notice requirements to permit an effective date of February 1, 1985. In support of its requests, SWEPCO states that it tendered the filing as soon as practicable and that the customers support the proposed waiver. SWEPCO knew at least by January 3, 1985 (the day Pirkey Unit No. 1 became operational) that the agreement permitted a revised equity return. Further, when the formula rates were initially accepted for filing, the company was advised that implementation of a higher equity return would require a timely filing with the Commission.[5] However, SWEPCO did not tender its filing until April 10, 1985. In addition, while SWEPCO included in its filing letters from the customers supporting the proposed revision and requested waivers, Hope has now reversed its position and opposes the proposed equity return revision. Under the circumstances, we do not find that SWEPCO has demonstrated good cause for waiver and, therefore, we shall deny the company's request. Accordingly, we shall suspend SWEPCO's rates for five months from sixty days after filing to become effective on November 10, 1985, subject to refund.

Finally, we find that common questions of law and fact may be presented in Docket Nos. ER85-424-000 and ER85-425-000. As a result, we shall consolidate these dockets for purposes of hearing and decision.

The Commission orders:

(A) Hope's motion to reject SWEPCO's filing is hereby denied.

(B) SWEPCO's request for waiver of the notice requirements is hereby denied.

(C) SWEPCO's rates are hereby accepted for filing and suspended for five months from sixty days after filing, to become effective, subject to refund, on November 10, 1985.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of SWEPCO's rates.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days from the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) Docket No. ER85-424-000 is hereby consolidated with Docket No. ER85-425-000 for purposes of hearing and decision.

(G) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

SOUTHWESTERN ELECTRIC POWER COMPANY RATE SCHEDULE DESIGNATIONS

Designation	Other party
Docket No. ER85-424-000: (1) Supplement No. 2 to Rate Schedule FERC No. 84	Northeast Texas Electric Cooperative, Inc.
Docket No. ER85-425-000: (2) Supplement No. 2 to Rate Schedule FERC No. 86	City of Hope, Arkansas.

[FR Doc. 85-13941 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-2-9-000 and TA85-2-9-001]

Tennessee Gas Pipeline Co.; Rate Change Under Tariff Rate Adjustment Provisions

June 5, 1985.

Take notice that on May 29, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective July 1, 1985:

Original Volume No. 1

Fourteenth Revised Sheet No. 21
Eleventh Revised Sheet No. 20
Alternate Fourteenth Revised Sheet No. 21
Ninth Revised Sheet Nos. 23 through 30

Tennessee states that the revised tariff sheets reflect alternative PGA rate adjustments. One adjustment is based on a $2.7002 cents per dth weighted average cost of gas and $0 surcharge for amortizing its unrecovered purchased gas cost account. The alternate adjustment is based on a $2.95 per dth weighted average cost of gas and a 72.12 cents per dth surcharge. Tennessee states that its ability to achieve the lower cost of gas is dependent upon the completion of settlement discussions

[3] 50 FR 18557 (1985).

[4] Hope's motion contradicts a letter dated April 3, 1985, and appended to SWEPCO's filing, in which it supported acceptance of SWEPCO's filing and waiver of the notice requirements.

[5] Letter orders to SWEPCO dated June 11, 1982 (Docket No. ER82-463-000), and December 23, 1982 (Docket No. ER83-167-000).

with its customers and that it will notify the Commission prior to the July 1, 1985, effective date as to which filing is to be made effective. Tennessee states that the filing also reflects reductions in its commodity rates pursuant to the Settlement Agreement (February 5, 1985) in Docket No. RP83–8, *et al.* If that agreement is not approved by July 1, 1985, Tennessee states that it will revise this filing.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons 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, Washington, D.C. 20426, in accordance with Rules 208 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 12, 1985. 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; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–13942 Filed 6–7–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA85–3–29–000]

Transcontinental Gas Pipe Line Corp.; Compliance Tariff Filing

June 5, 1985.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on May 30, 1985 certain substitute tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until May 31, 1985. The proposed tariff sheets are filed pursuant to Ordering Paragraph (C) of the Order issued April 30, 1985 by the Federal Energy Regulatory Commission (Commission) in the captioned proceedings.

The substitute sheets have a proposed effective date of April 1, 1985 and supersede like-numbered tariff sheets contained in Transco's PGA filing of March 29, 1985 in Docket No. TA85–3–29–000. Transco states that while it is submitting the aforementioned substitute tariff sheets pursuant to the Commission's April 30 Order, it is filing, concurrently with this filing, a motion for clarification of the April 30 Order and a motion for a stay of the effectiveness of these tariff sheets pending Commission action on Transco's Petition for Authority to Institute Direct Billing Procedure For Retroactive Order No. 94 Payments, pending in Docket No. RP85–148–000. Transco's Motion for Clarification and Stay is contained in Appendix B to the instant filing.

Transco further states that in accordance with § 154.16 of the Commission's Regulations, copies of this filing were mailed to all parties to this proceeding and to all persons upon whom the original filing herein was made.

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, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this 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. 85–13943 Filed 6–7–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA85–2–11–000, TA85–2–11–001]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

June 5, 1985.

Take notice that on May 31, 1985, United Gas Pipe Line Company (United) tendered for filing Sixty-Eighth Revised Sheet No. 4, Eleventh Revised Sheet Nos. 4–A and 4–B, and Sixteenth Revised Sheet No. 4C to its FERC Gas Tariff, First Revised Volume No. 1. Tariff Sheets 4, 4–A and 4–B and supporting information are being filed pursuant to Sections 19, 21, 23 and 24 of United's Tariff. Tariff Sheet No. 4–C is submitted pursuant to the letter order issued by the Office of Pipeline and Producer Regulations dated January 27, 1982 in Docket No. CP81–387–00. In addition, United tendered for filing, Second Revised Sheet No. 4–D and First Revised Sheet No. 4–E to reflect a rate reduction resulting from elimination of additional income taxes related to amortization of unfunded tax liability ("South Georgia" method). The rate adjustment is considered on the other Tariff Sheets tendered herewith as appropriate. Also, United tendered First Revised Sheet No. 74–K to comply with paragraph C of FERC Opinion No. 226 issued September 24, 1984 in Docket No. RP84–85. The proposed effective date of each preceding Tariff Sheet is July 1, 1985.

United reports that it mailed copies of the proposed Tariff Sheets and supporting data to its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 12, 1985. 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. 85–13944 Filed 6–7–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–528–000]

Wisconsin Power and Light Co.; Filing

June 5, 1985.

The filing Company submits the following:

Take notice that on May 20, 1985, Wisconsin Power and Light Company (WPL) tendered for filing a revised wholesale power contract dated November 7, 1984 between the Village of Pardeeville Water and Light Commission and WPL. WPL states that this revised contract is filed, at the Village's request for the purpose of revising and updating the language in the existing agreement.

WPL states that a copy of the revised contract and the filing have been provided to the Village of Pardeeville Water and Light Commission and the Public Service Commission of Wisconsin.

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, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1985. 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. 85-13953 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-526-000]

Wisconsin Public Service Corp.; Filing

June 5, 1985.

The filing Company submits the following:

Take notice that on May 20, 1985 Wisconsin Public Service Corporation (WPSC) tendered for filing supplements to the following agreements:

Service Agreement No. 1

June 24, 1977, "Partial Requirements Service Agreement," between Consolidated Water Power Company and Wisconsin Public Service Corporation.

Service Agreement No. 2

June 19, 1978, "Partial Requirements Service Agreement," between the City of Manitowoc, Wisconsin and Wisconsin Public Service Corporation.

Service Agreement No. 3

February 21, 1980, "Partial Requirements Service Agreement," between the City of Marshfield, Wisconsin, and Wisconsin Public Service Corporation.

WPSC states that these supplements will revise the contract demand quantities in accordance with Exhibit 1 of the service agreement, Paragraph 6, *Requirements.*

WPSC requests an effective date of June 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the City of Marshfield, Wisconsin, City of Manitowoc, Wisconsin, and the Consolidated Water Power Company.

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, 385.214). All such motions or protests should be filed on or before June 14, 1985. 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. 85-13954 Filed 6-7-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $5,615.95 (plus accrued interest) in consent order funds to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving the DOE and Conlo Service, Inc.

DATES AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the Federal Register and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. All comments should conspicuously display a reference to Case Number HEF-0053.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a Consent Order entered into by the DOE and Conlo Service, Inc. (Conlo). This Consent Order settled possible pricing violations in Conlo's sales of motor gasoline to its customers during the period April 1, 1979 through September 30, 1980.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the Conlo escrow account. The DOE has tentatively decided that these funds should be distributed to those customers of Conlo who establish that they were injured by the firm's alleged overcharges. Such customers will receive refunds based on the amount they were allegedly overcharged according to DOE audit files. However, Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, D.C. 20585.

Dated: May 31, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

May 31, 1985.

Name of Firm: Conlo Service, Inc.
Date of Filing: October 13, 1983.
Case Number: HEF-0053.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the affects of alleged or adjudicated violations of the DOE regulations. *See* 10 CFR Part 205,

Subpart V. The ERA filed such a petition on October 13, 1983, requesting that the OHA implement a special refund proceeding to distribute funds received pursuant to a Consent Order entered into by the DOE and Conlo Service, Inc. (Conlo) of East Farmingdale, New York.

I. Background

Conlo is a "reseller-retailer" of "motor gasoline" as these terms were defined in 10 CFR 212.31. An ERA audit of Conlo's operations during the period April 1, 1979 through September 30, 1980 (the audit period) revealed possible violations of the Mandatory Petroleum Price Regulations in the amount of $13,390.34 with respect to the firm's sales of motor gasoline to resellers and retailers. In order to settle all claims and disputes between Conlo and the DOE regarding these sales, Conlo and the DOE entered into a Consent Order on March 20, 1981, in which Conlo agreed to remit $4,854.00 to the DOE. This Consent Order refers to the ERA's allegations of overcharges, but notes that no findings of violation were made. Additionally, it states that Conlo does not admit that it committed any such violations. Conlo remitted to the DOE $5,615.95 ($4,854 principal plus $761.95 interest), which is currently being held in an interest-bearing escrow account pending distribution by the DOE.

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Supart V. The Subpart V process may be used in situations where the DOE is unable to readily identify persons who have been injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*).

II. Proposed Refund Procedures

We have considered the ERA petition to implement a Subpart V proceeding with respect to the Conlo consent order fund and have determined that it is appropriate to establish such a proceeding. Insofar as possible, the consent order fund should be distributed to those customers of Conlo who were injured by the alleged price violations. The ERA audit file pertaining to the investigation of Conlo's pricing practices lists the names of retailer and reseller customers who purchased motor gasoline from Conlo along with the amounts these customers were allegedly overcharged. This information is listed in the Appendix to this Proposed Decision and Order. In our view, these identified customers are most likely the parties who are eligible for refunds in this proceeding. However, we recognize that there may be other purchasers of refined petroleum products from Conlo who were not listed in the ERA audit files and who may have been injured by the firm's pricing practices during the consent order period.[1] We therefore proposed to accept applications from any party that can show injury resulting from Conlo's alleged overcharges.

The identified Conlo customers are all resellers, i.e., retailers and wholesalers. In Subpart V proceedings, reseller applicants are generally required to demonstrate that they did not pass on to their customers price increases implemented by the consent order firm. *See, e.g., Vickers.* In order to quality for a refund, resellers must show that during the consent order period they would have maintained their prices for the product they resold at the same level had the alleged overcharges not occurred. A reseller must also show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. The maintanence of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc., 10 DOE ¶ 85,038 (1982).*

However, as in many prior special refund cases, we propose to adopt a presumption of injury with respect to small claims by resellers. The use of presumptions in refund cases is specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). In the present case, we are proposing to adopt a presumption that reseller claimants seeking small refunds were injured by Conlo' pricing practices. This presumption is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of refund claims quickly, and use its limited resources more efficiently. Finally, we know that these smaller claimants did purchase covered products from Conlo and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The small claim presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream, of that initial impact.

Under the presumption we are proposing to adopt, a reseller claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level.[2] Previous OHA refund decisions

[1] In the present case, the consent order period is the same as the audit period, April 1, 1979 through September 30, 1980.

[2] We propose that resellers who made only spot purchases from Conlo be presumed to have suffered no injury. They would therefore be ineligible for any refund, even a refund at or below the threshold level. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396-97; *see also Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that it was not injured, in addition to the proof of injury required of those resellers claiming more than the threshold amount, any reseller claiminat who was a spot purchaser must

Continued

have expressed the threshold either in terms of a ceiling on purchases from the consent order firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We propose to follow the same approach in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In the present case, where the proposed maximum refund amounts are fairly low and the time period of the Conlo Consent Order is distant, we believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable.[8] *See id.; Marion Corp.* 12 DOE ¶ 85,014 (1984).

III. Calculation of Refund Amounts

We must further determine the proper method for dividing the consent order fund among successful applicants. We propose that the maximum refund for the customers listed in the Appendix be based on the amount they were allegedly overcharged, as indicated by the ERA audit files. Although we recognize that these files do not provide conclusive evidence as to the identity of all injured parties or the amount of money they should receive in a Subpart V proceeding, we believe it is appropriate to use this information in the present case. Specifically, we note that the ERA audit was very narrow in scope, that the portion of the Conlo Consent Order dealt with in this proceeding is limited to the same products and time periods as the audit, and that Conlo had relatively few reseller customers. Because of these factors, the information contained in the ERA audit files can be used for guidance in fashioning a refund plan which is likely to correspond closely to the injuries experienced. *See, e.g., Marion.* To calculate the maximum refund amount for each identified customer listed in the Appendix, we propose to multiply the alleged overcharge amounts for each firm by a pro rata factor, determined by dividing the applicable consent order amount ($5,615.95) by the total alleged overcharges ($13,390.34). This yields a pro rata factor of 0.4194. The interest which has accrued on the money in the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing copies of the proposed and final decisions in the **Federal Register**, copies will be provided to Conlo's customers whose names and addresses are set forth in the Appendix.

In the event that money remains after all first-stage claims have been disposed of, these funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Conlo Service, Inc. pursuant to the Consent Order executed on March 20, 1981, will be distributed in accordance with the foregoing Decision.

Appendix A

Conlo Service, Inc., Conklin St. & Locust Ave., East Farmingdale, NY 11735

Consent Order Period: 4/1/79—9/30/80.

Product Covered: Motor gasoline.

Consent Order Amount: $5,615.95.

Pro Rate Factor ($5,615.95 divided by $13,390.34): .4194.

Identified customers	Alleged overcharges	Potential refunds [1]
Frank's Auto, 661 Burnside Ave., Lawrence, NY 11559	$107.12	$45
Jimmy's 105 Putnam Avenue, 105 Putnam Ave., Atlantic Beach, NJ 11509	8,379.67	3,514
Queen Bee, Veteran's Highway and Long Island Expressway, Holbrook, NY 11741	4,401.97	588
S&J Service, Hempstead Ave., Hempstead, NY 11552	121.85	51
Malverne Park Service, Ocean Ave., Malvern, NY 11565	877.07	368
John & Kenney's 234 Route 109, West Babylon, NY 11704	772.63	324
Mitex, 1286 Route 110, Farmingdale, NY 11735	378.95	159
Super Car Clinic, Conklin St. and Denton Ave., Farmingdale, NY 11735	253.06	106
W&C 3821 Veterans Hwy., Ronkonkoma, NY 11779	117.83	49
Acme Marine, Lawrence Basin, Lawrence, NY 11559	384.30	161
Nat Park Gulf, Austin Blvd., Island Park, NY 11558	361.54	152
B&W Auto, Route 109, Lindenhurst, NY 11757	234.33	98

[1] Rounded to the nearest dollar.

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submit additional evidence to establish that it was unable to exercise considerable discretion as to where and when it made the purchase(s) on which its refund claim is based.

[8] Under the refund methodology proposed in Part III of this Proposed Decision, all of Conlo's identified eligible customers would be below this threshold.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $6,193.20 (plus accrued interest) obtained as the result of a Consent Order which the DOE entered into with E.M. Bailey Distributing Company, Inc. (EMB) of Paducah, Kentucky. The funds will be available to customers that purchased certain refined petroleum products from EMB during the period November 1, 1973 through March 31, 1974.

DATE AND ADDRESS: Applications for refund of a portion of the EMB consent order funds must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to E.M. Bailey Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All applications should conspicuously display a reference to Case Number HEF-0033.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order relates to a Consent Order entered into by E.M. Bailey Distributing Company, Inc. (EMB) of Paducah, Kentucky. That Consent Order settled possible pricing violations with respect to the firm's sales of certain refined petroleum

products during the period November 1, 1973 through March 31, 1974. Under the terms of the Consent Order, $6,193.20 has been remitted by EMB and is being held in an interest-bearing escrow account pending determination of its proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the EMB consent order funds. The Proposed Decision and Order discussing the distribution of the EMB consent order funds was issued on March 18, 1985, 50 FR 12397 (March 28, 1985).

The Decision and Order published with this Notice reflects an analysis of the comments received from interested parties. As the Decision indicates, applications for refund from the consent order funds may not be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Applications will be accepted from customers who purchased refined petroleum products from EMB during the period November 1, 1973 through March 31, 1974 as members of certain customer categories specified in the Decision and Order. The specific information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: May 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

May 21, 1985.

Name of Firm: E.M. Bailey Distributing Company, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0033.

Pursuant to the Department of Energy (DOE) procedural regulations, 10 CFR Part 205, Subpart V, on October 13, 1983, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) of the DOE in connection with a Consent Order entered into with E.M. Bailey Distributing Company, Inc. (EMB). The petition requests that the OHA formulate and implement procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations.

I. Background

EMB is a "reseller-retailer" of "refined petroleum products" as those terms were defined at 10 CFR 212.31, and is located in Paducah, Kentucky, with subsidiary operations in Mayfield, Murray, and Benton, Kentucky. An ERA audit of EMB revealed possible violations of the Mandatory Petroleum Price regulations during the period November 1, 1973 through March 31, 1974 (the audit period). Subsequently, on June 21, 1979, EMB entered into a Consent Order with the DOE in order to settle its disputes with the DOE and to resolve potential civil liability with respect to certain sales of refined petroleum products.

The EMB Consent Order covers sales of motor gasoline, kerosene, and diesel fuel during the audit period. The Consent Order refers to the ERA's allegations that EMB sold these covered products in violation of the reseller/retailer price rule at 10 CFR 212.93, but states that in consideration of EMB's implementation of the terms and conditions of the Consent Order, EMB will be deemed to have been in compliance with the price rule during the audit period. Under the terms of the Consent Order, EMB agreed to make direct refunds totalling $30,935.53 to customers who were identified as allegedly overcharged parties. In addition, EMB remitted $6,193.20 to the DOE to provide restitution for unidentified EMB customers in the following categories: (i) Retail dealers of Chevron USA-branded regular or supreme motor gasoline, diesel fuel, or kerosene, (ii) industrial end-users who purchased kerosene not sold under the Chevron USA brand, and (iii) retail customers who purchased premium or regular motor gasoline from EMB retail outlets that did not sell under the Chevron USA brand.[1] This Decision and Order concerns the distribution of the $6,193.20, which is currently held in a DOE escrow account, plus accumulated interest (the consent order funds).

On March 18, 1985, we issued a Proposed Decision and Order (PDO) tentatively setting forth procedures to distribute refunds to parties who were injured by EMB's alleged overcharges. *See E.M. Bailey Distributing Co.*, Case No. HEF-0033 (March 18, 1985) (proposed decision), 50 FR 12397 (March 28, 1985). In the PDO, we described a two-stage process for distribution of the EMB consent order funds. Specifically, we proposed to disburse funds in the first stage to claimants who could demonstrate that they were injured by EMB's alleged overcharges during the consent order period. We stated that refunds would be available only for customers who were members of the three categories specified above, and that customers who had already received direct refunds pursuant to the EMB Consent Order would be ineligible for further refunds based upon the same transactions. Finally, we stated that any money available after payment of refunds to eligible claimants in the first stage would be distributed during a second-stage process and that the ultimate disposition of those second-stage funds would not be determined until after the completion of the first stage.

The purpose of this Decision and Order is to establish procedures to be used for filing and processing claims in the first stage of the EMB refund process. This Decision sets forth the information that a purchaser of EMB products should submit in order to establish eligibility for a portion of the consent order funds. In establishing these requirements, we will address comments filed in response to the first-stage proposal in the PDO. We will not, however, determine second-stage procedures in this Decision. Our determination concerning the final disposition of any remaining funds will necessarily depend on the size of the funds. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981) (Coline). It would therefore be premature for us to address the issues raised by commenters concerning the proposed disposition of funds remaining after all meritorious first-stage claims have been paid.

II. Jurisdiction and Authority To Fashion Refund Procedures

The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan for distribution of funds received as part of a settlement agreement or pursuant to a Remedial Order. The Subpart V process may be used in situations where the DOE is unable readily to identify the persons or firms who were injured as a result of alleged or adjudicated violations or to ascertain the amount of each person's or firm's injuries. *See Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982). For a more detailed discussion of Subpart V and the

[1] There appear to have been three outlets operated by EMB that did not sell under the Chevron USA brand: Fredonia Speedway, Jack's Speedway, and Park Avenue Speedway. The Park Avenue Speedway outlet's motor gasoline sales are covered by the Consent Order only through January 1, 1974, since EMB ceased operating that outlet after that date.

authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Coline* and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

On April 29, 1985, EMB filed a document with this Office entitled "Petition of E.M. Bailey Distributing Company, Inc. for Modification or Recision of Proposed Decision and Order of the Office of Hearings and Appeals, Case Number HEF-0033" (hereinafter referred to as "Comments").[2] In these Comments, EMB contends that the PDO should not be issued in final form and that the consent order funds should be "retained in the General Fund of the United States Treasury." *Comments* at 2-3.[3] In support of its contentions, EMB asserts that the implementation of a Subpart V proceeding to distribute the consent order funds violates the terms of the EMB Consent Order which preclude administrative proceedings adjudicating EMB's liability under the petroleum regulations, and will harm the firm's business reputation and good will. For the reasons set forth below, we reject the firm's contentions.

As an initial matter, the PDO is consistent with the language and intent of the EMB Consent Order. Contrary to the firm's assertions, the Subpart V process involves no adjudication of liability under the petroleum regulations and we will not concern ourselves with any aspect of that issue in this proceeding. The PDO expressly recognized that as a result of the settlement, EMB was deemed to have been in compliance with the price regulations during the audit period. *See* PDO at 2. Furthermore, the restitutionary procedures proposed in the PDO are clearly in accord with the language of the EMB Consent Order. The Consent Order states that EMB agrees to "[i]ssue a check payable to the U.S. Department of Energy in the amount of $6,193.20 *to effect refunds to non-identified customers in* [certain] *classes of purchaser.*" EMB Consent Order ¶ 7b (emphasis added). Therefore, contrary to EMB's claims, the DOE did not promise not to attempt to distribute refunds to EMB's customers; instead, the Consent Order specifically earmarks funds for the purpose of providing restitution to specified categories of EMB customers. Accordingly, the implementation of special refund procedures for the disbursement of the EMB consent order funds is consistent with the terms of the EMB Consent Order.

EMB further asserts that our statement in the PDO that its customers were injured by the alleged overcharges constitutes an adjudication of EMB's liability under the DOE regulations without providing EMB due process.[4] This assertion is utterly without merit. As we stated above, this special refund proceeding involves no adjudication of liability. Special refund proceedings are equitable in nature and a determination by this Office that a refund application filed pursuant to Subpart V is meritorious does not represent an adjudication of a consent order firm's liability under the DOE regulations.[5] Both the OHA and the Temporary Emergency Court of Appeals have consistently recognized that it is outside the scope of a special refund proceeding for us to determine whether violations of DOE regulations actually occurred. *See, e.g., Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 at 88,038 (1984); *Kern Oil & Refining Co. v. Tenneco Oil Co.*, Fed. Energy Guidelines, Court Decisions 1981-1984, ¶ 26,469 (Temp. Emer. Ct. App. 1983). Nothing in this Decision or in any future Decision that may be issued with respect to refund applications in the EMB special refund proceeding should in any way be construed as a finding by the DOE that EMB was in violation of the reseller/retailer price rule during the consent order period.

EMB also expresses concern that the implementation of special refund procedures will harm the firm's business reputation and good will. The firm has provided nothing to substantiate its conjecture, and we find it difficult to believe that EMB's reputation will be harmed by a proceeding in which moneys are made available to limited categories of EMB customers pursuant to a settlement agreement that resolves allegations concerning transactions that took place more than eleven years ago. Moreover, we note that the Subpart V regulations were in effect at the time the EMB Consent Order was executed, and the language of the Consent Order clearly indicates that its purpose is to accomplish restitution for the alleged overcharges. We presume that the terms of the Consent Order were arrived at through careful negotiations by both sides. If EMB wished to place specific conditions upon the disposition of the funds currently held in escrow, such as the prohibition of a Subpart V proceeding or the placement of the consent order funds in the U.S. Treasury, the firm could have attempted to insert such terms into the agreement. We cannot now modify the terms of the Consent Order EMB executed with the DOE merely because the firm is dissatisfied with the provisions to which it voluntarily agreed.[6] *See United States v. Armour & Co.*, 402 U.S. 673, 682 (1971); *Office of Enforcement*, 10 DOE ¶ 85,021 at 88,089 (1982). We therefore reject EMB's claims that the implementation of Subpart V procedures in this proceeding would unlawfully adjudicate the firm's liability under the price regulations and damage the firm's reputation and good will.[7]

In summary, we find no basis for declining to implement a Subpart V proceeding in this case or for ordering the placement of the EMB consent order

[2] The submission states that it is filed pursuant to 10 CFR Part 205, Subpart J, and in response to the request for comments set forth in the PDO. Subpart J sets forth procedures by which a person may file an application for the modification or rescission of a DOE order upon meeting certain criteria. *See* 10 CFR 205.135(b). Since the PDO is not an order of the DOE, but rather an unsigned proposed decision soliciting comments concerning procedures this Office proposes to adopt, Subpart J is not applicable. We shall therefore treat EMB's submission as comments concerning the procedures we have proposed and address them in that light. No other comments concerning first-stage procedures were received.

[3] The $6,193.20 consent order fund was actually placed in a DOE escrow account established with the U.S. Treasury.

[4] EMB also asserts that, in negotiating the terms of the Consent Order, the ERA assured EMB that there would be no future administrative or judicial procedures involving EMB. EMB has presented no evidence of such an agreement. In any event, this special refund proceeding does not involve EMB, but the distribution of the escrowed funds. EMB is not a party, and was informed of the proceeding only as a matter of courtesy.

[5] EMB cites our statement that we do not have many names of potential applicants in this proceeding as evidence that the DOE never proved any regulatory violations. Since we are not asserting that the DOE ever proved any regulatory violations, this contention is irrelevant. In any event, we fail to see any connection between the number of customer names and addresses we possess and the validity of the refund process. As we noted above, the Subpart V regulations specifically provide that they may be used in cases where the DOE has difficulty in identifying those persons who may be eligible for refunds. *See* 10 CFR 205.280. Moreover, as we have explained, EMB made direct refunds through credit memoranda to many of its identifiable customers. The money EMB remitted to the DOE was specifically earmarked for "non-identified customers." Consent Order ¶ 5b.

[6] As EMB itself acknowledges, the OHA has endorsed the principle that the terms of a consent order can be modified only under extraordinary circumstances. *See* Comments at 16-17; *see also Vickers*, 8 DOE at 85,394.

[7] EMB was requested to assist the refund process by helping us to locate those customers who may be eligible for refunds. In its Comments, EMB construes our request for such assistance as an "attempt to require EMB to assist in refunds." Comments at 9. This is not the case. Our statement was not intended to require EMB to provide assistance. We would continue to welcome cooperation from EMB, however, and believe that EMB's customers would appreciate assistance in receiving the refunds to which they are entitled.

funds in the General Fund of the U.S. Treasury.[8]

III. Determination of Injury and Refund Amounts

As we noted above, three groups of EMB customers are eligible for refunds in this proceeding. They are: (i) Retail dealers of Chevron USA-branded regular or supreme motor gasoline, diesel fuel, or kerosene, (ii) industrial end-users who purchased kerosene not sold under the Chevron USA brand, and (iii) retail customers who purchased premium or regular motor gasoline from three EMB retail outlets that did not sell under the Chevron USA brand. *See* footnote 1. These applicants can be divided into the following two categories: (i) Retailers of the products specified in the EMB Consent Order, and (ii) firms, individuals, or oganizations that were consumers of the products covered by the EMB Consent Order.[9] In keeping with the intent of the Consent Order, claimants will be required to make a showing that they fall into one of the EMB customer groups specified above as intended recipients of refunds in this proceeding.[10]

In the PDO, we stated that we intended to adopt certain presumptions in order that refunds might be distributed efficiently and equitably. First, we proposed to adopt a presumption that the alleged overcharges were dispersed equally in all of EMB's sales to the customer groups specified above during the consent order period. The OHA has referred to this presumption in the past as a volumetric refund amount. Second, we proposed to adopt a presumption of injury with respect to small claims. Since we have received no comments specifically challenging the adoption of either of these presumptions, we shall adopt them in this proceeding.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective, and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we are adopting in this case are used to permit claimants to participate in the EMB refund proceeding without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption we are establishing in this proceeding assumes that alleged overcharges were spread equally over all gallons of product sold by EMB to the categories of customer mentioned earlier. However, as we stated in the PDO, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser will be allowed to file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 (1984); *Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984). To determine the per gallon volumetric amount in the instant proceeding, the $6,193.20 consent order amount will be divided by the estimated total volume of refined petroleum products which EMB sold during the consent order period to the appropriate classes of purchaser.[11] Using the information available to us at the present time, the volumetric amount in this proceeding will be $0.00167 per gallon ($6,193.20 divided by 3,707,541 gallons). Refunds will be calculated by multiplying the volumetric amount by the total amount of the consent order product that an applicant purchased from EMB. The interest which has accrued on the money in the escrow account will be distributed to each successful claimant in proportion to its refund amount.

The second presumption we are establishing involves small claims made by retailers. In general, retailers who file refund claims in Subpart V proceedings are required to establish that they absorbed the alleged overcharges. To make this showing, they must demonstrate that, at the time they purchased refined petroleum products from a consent order firm, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. However, in this case, as in prior special refund proceedings, we will adopt a presumption that retailer claimants for small refunds were injured by EMB's alleged overcharges. *See Midwest Industrial Fuels, Inc.*, 12 DOE ¶ 85,131 (1984). As we have stated in many prior refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding

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[8] EMB also argues that the Subpart V mechanism is inefficient in this case because the costs of such a proceeding allegedly exceed the escrow amount. We are not persuaded by this argument. It must be emphasized that the efficiency and cost-effectiveness of the EMB proceeding cannot be viewed in isolation; it must be seen in the context of a program involving hundreds of consent orders involving varying amounts of money. Because many consent orders are similar, we are often able to combine a number of proceedings into one consolidated Decision and Order. *See, e.g., Texas Oil and Gas Corp. et al.*, 12 DOE ¶ 85,069 (1984) (27 firms); *A. Johnson et al.*, 12 DOE ¶ 85,102 (1984) (194 firms). Even when individual factual circumstances make consolidation unfeasible, we are able to use a number of presumptions which simplify and render more efficient our analysis in refund proceedings. *See* 10 CFR 205.282(e). Finally, we note that the costs involved in implementing the EMB Subpart V proceeding are paid from the funds appropriated for this Office, and not from the EMB consent order fund. In deciding whether to implement a Subpart V proceeding, we consider the importance of providing restitution for alleged or adjudicated overcharges independently of the amount of money in any escrow account. We then weigh this restitutionary goal against the ability of the OHA to carry out its functions in an efficient manner. The Subpart V process as a whole has proven to be extremely efficient and cost-effective. In fact, in fiscal year 1984, the amount distributed by this Office in Subpart V proceedings was more than five times OHA's annual budget for all operations, not just Subpart V proceedings.

[9] EMB asserts that the audit pertained only to wholesale customers and did not involve sales to retail customers and that therefore the PDO erroneously proposed that such consumers be eligible for refunds. EMB is incorrect. It is apparent from the ERA files that the audit covered "retail sales" as that term was defined at 10 CFR 212.31. However, even if EMB's characterization of the audit were correct, this argument is without merit since the scope of the audit is irrelevant for purposes of this proceeding. The content of the Consent Order, not the scope of the audit, must be the focus of this proceeding. In many cases, consent orders negotiated between companies and the DOE encompass matters which are somewhat different than, or in addition to, the specific areas covered by the audits. As indicated above, in fashioning refund procedures in this case, we have been guided primarily by the terms of the Consent Order and the requirements of Subpart V. It is clear from the wording of the EMB Consent Order that retail customers are included within its scope. Accordingly, retail customers of EMB products may be eligible for refunds if (i) they purchased motor gasoline from the EMB salaried stations whose sales were covered by the Consent Order, or (ii) they are industrial end-users who purchased EMB kerosene not sold under the Chevron USA brand.

[10] As we noted in the PDO, any customer who received a direct refund under the terms of the EMB Consent Order shall not be eligible for an additional refund based on purchases for which it has already received a refund.

[11] Pursuant to the EMB Consent Order, one of the retail dealers who purchased Chevron USA-branded motor gasoline from EMB, Joe Douglas, was entitled to a direct refund. Mr. Douglas is therefore not entitled to a refund in this proceeding based on those purchases of motor gasoline and the volumes purchased by him have been deducted from EMB's sales volumes for the purpose of computing the volumetric amount.

the impact of alleged overcharges which in the present case took place more than eleven years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information and the cost to the OHA of analyzing it may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain refunds. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and therefore to use its limited resources more efficiently.

Under the small claims presumption we are adopting, a retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes unless its volumetric refund exceeds $5,000.[12] *See Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984) and cases cited therein.

We shall also adopt our proposed finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled by the EMB Consent Order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983), *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) and cases cited therein. We have therefore concluded that end-users of petroleum products covered by the EMB Consent Order need only document their purchase volumes from EMB in order to make a sufficient showing that they were injured by the alleged overcharges.

Since we have received no comments objecting to it, we shall also adopt our proposal to establish a minimum refund amount of $15 for first-stage claims. In prior special refund cases, we have not approved refunds for less than $15 because the cost to the public of issuing such small refunds exceeds the restitutionary benefits that may achieved. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,214 (1982); *see also* 10 CFR 205.286(b).

IV. Application for Refund Procedures

After having considered the comments received concerning the first-stage procedures tentatively adopted in our March 18, 1985 proposed decision, we have concluded that applications for refund should now be accepted from parties who purchased EMB products during the consent order period and fall within one of the three categories referred to above. Applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.286. An application must be in writing, signed by the applicant, and specify that it pertains to the EMB Consent Order Fund, Case No. HEF-0033.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. Any claimant whose application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential.

Each application must also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowldge and belief. *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, title, and telephone number of a person who may be contacted by the OHA for additional information concerning the application. All applications should be sent to: E.M. Bailey Distributing Co., Inc., Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

In order to assist applicants in establishing eligibility for a portion of the EMB consent order funds, the following subjects should be covered in applications for refund:

A. Each applicant should state whether it was:

i. A retail dealer of Chevron USA-branded regular or supreme motor gasoline, diesel fuel, or kerosene,

ii. An industrial end-user who purchased kerosene not sold under the Chevron USA brand,

iii. A retail customer who purchased premium or regular motor gasoline from an EMB retail outlet that did not sell under the Chevron USA brand, or

iv. Other (specify whether retailer or end-user and explain why the claimant believes it is entitled to a refund).

B. Each applicant should report its volume of EMB product purchases by month for the period of time for which it is claiming that it was injured by the alleged overcharges.

C. Each applicant should report whether it is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its application for refund. *See* 10 CFR 205.9(d).

It Is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to the Department of Energy by E.M. Bailey Distributing Company, Inc. pursuant to the Consent Order executed on June 21, 1979 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: May 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-13850 Filed 6-7-85; 8:45 am]

BILLING CODE 6450-01-M

[12] As we noted in the PDO, retailers that were spot purchasers from EMB will be ineligible to receive any refunds, unless they make a showing that rebuts the presumption that they were not injured. As we have previously noted, a spot purchaser would not have made spot market purchases of a firm's product at increased prices unless it was able to pass through to its own customers the full amount of the firm's quoted selling price at the time of purchase. *See Vickers*, 8 DOE at 85,396-97. In order to overcome the rebuttable presumption that it was not injured, a spot purchaser should submit additional evidence to establish that it would be inappropriate to presume that it had discretion as to where and when to make the purchase(s) upon which the refund claim is based.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to e followed in refunding $5,179,933.84 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings brought by the Economic Regulatory Administration of the Department of Energy involving the six firms named below. The business operations of these firms included sales of natural gas liquids and petroleum products.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All comments should conspicuously display a reference to case numbers HEF-0179, *et al.*

FOR FURTHER INFORMATION CONTACT: Virginia A. Lipton, Assistant Director, Office of Hearing and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2400.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order relates to consent orders entered into by the DOE and the six firms set out in the Appendix below.

The Proposed Decision and Order sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of escrow accounts funded by these firms pursuant to the consent orders. The DOE has tentatively decided that Applications for Refund should be accepted from firms and individuals that purchased covered products from any of the six named firms during the relevant consent order period set forth in the Appendix. The Proposed Decision and Order provides that in order to receive a portion of the settlement funds provided by five of the six consent order firms, a claimant must furnish the DOE with evidence that it was injured by the allegedly unlawful prices for covered products charged by the relevant consent order firm. This evidence should include specific documentation concerning the date, price and volume of product purchased, indicate whether the increased costs were absorbed by the claimant or passed through to other purchasers, and state the extent of any injury alleged to have been suffered. However, the Proposed Decision indicates that no separate, detailed showing of injury will be required of end users of the relevant product, or of firms which file refund claims in amounts of $5,000 or less from any single consent order fund. According to the Proposed Decision and Order, the amount of the refund will generally be a pro rata share of the fund made available by the consent order firm. The Proposed Order further points out that the consent order entered into by one firm, Tiger Oil Company, settled DOE allegations that the firm failed to supply four of its customers with the amount of motor gasoline to which they were entitled under DOE regulations. The DOE proposed to divide the Tiger settlement fund of $4,000 equally among the four retail motor gasoline outlets that were identified in DOE audit files as not having received appropriate allocations of motor gasoline from Tiger.

Until a final Decision and Order is issued, no claims for refund can be accepted. Applications for Refund therefore should not be filed at this time. Appropriate public notice, including notice published in the **Federal Register**, will be given when the submission of claims is authorized. The deadline for filing such claims will be no less than 90 days from publication of such notice in the **Federal Register.**

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties should submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: May 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

May 21, 1985.

Names of Cases: Thompson Oil Company, *et al.*

Date of Filing: October 13, 1983.

Case Numbers: HEF-0179, *et al.*

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals formulate and implement special procedures to make refunds, in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V.

In accordance with these regulatory provisions, the ERA filed a Petition for the Implementation of Special Refund Proceedings in connection with consent orders entered into with the six firms set forth in the exhibits to the Appendix to this Proposed Decision. An audit of the records of those firms revealed possible pricing violations with respect to their sales of natural gas liquids (NGLs), natural gas liquid products (NGLPs), and refined petroleum products during the periods indicated in the exhibits.[1] In order to settle all claims and disputes with the DOE regarding their sales of these products during their respective audit periods, the firms entered into consent orders. The exhibits to the Appendix indicate the amount of money provided to the DOE by each firm. The total amount of funds made available by those firms that is subject to distribution in this proceeding is $5,179,933.84.

I. Jurisdiction and Authority To Fashion Refund Procedures

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify persons who may have been injured as a result of alleged regulatory violations resolved by a DOE consent order or remedial order or where the DOE is unable to readily ascertain the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

After reviewing the records developed in the instant cases, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the available funds, because there is a

[1] NGLPs include propane, butane, and natural gasoline. A gas plant operator may sell small quantities of other products, such as condensate.

significant degree of difficulty in identifying and locating the persons who were injured by the alleged overcharges. Further, as a result of decontrol of petroleum products, price rollbacks are no longer an effective means of refunding money to purchasers who were overcharged in the past. *See* Exec. Order No. 12287, 46 FR 9909 (January 30, 1981).

II. Proposed Refund Procedures

In so far as possible the $5,180,000 in consent order funds should be distributed to direct and indirect customers of the consent order firms named in the exhibits. As shown in the exhibits to the Appendix, the operations of the six consent order firms involved in this proceeding included refining, reselling and retailing of petroleum products, NGLs and NGLPs. Therefore, it is likely that customers of these firms, and thus the potential refund applicants in this proceeding, will themselves be engaged in a variety of business operations. For example, potential refund applicants might be resellers, retailers, end-users engaged in businesses unrelated to the petroleum industry, or ultimate consumers that purchased petroleum products for personal use. In view of the wide variety of potential refund claimants from which we may expect to receive applications in this proceeding, we are unable to describe at this time the precise showing that each type of applicant will be expected to make. However, some general principles are set forth below.

A. Calculation of Allocable Shares

We must first determine the proper method for allocating among refund applicants the consent order funds provided by each firm. With respect to applications based on claims of alleged over-charges, it may be difficult for claimants to measure precisely the extent of an alleged overcharge. We have decided to generally follow a volumetric approach to determine the allocable share to which an applicant will be entitled. *Office of Special Counsel*, 9 DOE ¶ 82,545 (1982). Such an approach will permit a claimant to be eligible to receive a pro rata share of the individual consent order fund made available by the relevant consent order firm listed in the Appendix. However, we also recognize that the impact of a firm's pricing practices on an individual purchaser could have been greater, and any purchaser will therefore be allowed to file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon and Gasoline Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984). In the absence of a showing by a claimant of a disproportionate impact, we propose that the refund pool made available by each consent order firm, other than Tiger Oil Company (Tiger), be allocated as follows. We will multiply the number of gallons of product purchased by a qualified applicant by the volumetric factor. The volumetric factor is calculated by dividing the total amount of the fund provided by the relevant consent order firm by the total sales in gallons of all products covered by the consent order. Successful claimants will also receive a pro rata share of any interest accrued on the consent order funds made available by the relevant consent order firm. This volumetric approach will enable us to arrive at an appropriate allocable share for most individual refund applicants. The volumetric amount for each consent order firm, except Tiger, is indicated in the Appendix.

With respect to Tiger, we note that the consent order pertained to alleged violations concerning the firm's allocation of motor gasoline to four of its base period customers. See Appendix, Exhibit 2. That is, the consent order settled DOE claims that Tiger failed to supply these four customers with the amount of allocated product to which they were entitled under DOE regulations. The fund provided by Tiger in connection with these alleged violations is $4,000.[2] According to the Tiger audit files we examined, these four customers appear to be independently-owned or operated motor gasoline retail outlets. In view of the relatively small amount of consent order funds made available in connection with this alleged violations and since those customers that allegedly did not receive an appropriate allocation of motor gasoline have been identified in ERA audit papers, we propose that the $4,000 in Tiger consent order funds, plus accrued interest, be divided equally among the four named retail outlets. However, if one of these firms could show a likelihood that it experienced a disproportionate impact resulting from the alleged allocation violation, we would adjust the disbursement of the funds accordingly. In accordance with our normal procedures, we will continue to evaluate refund applications based on allocation violations filed with respect to funds made available by the other consent order firms named in the Appendix by referring to standards such as those set forth in *OKC Corp./Town & County Markets, Inc.*, 12 DOE ¶ 85,094 (1984), and *Aztex Energy Co.*, 12 DOE ¶ 85,118 (1984).

[2] The consent order also settled a separate alleged allocation violation, pursuant to which Tiger made a direct refund of $4,200 to the lessee of a fifth retail gasoline outlet.

B. Proof of Injury

We have also tentatively determined that in order to be eligible to receive all or a portion of its allocable share, an applicant claiming alleged overcharges must establish that it was injured as a result of its purchases from the consent order firm. While there are a variety of ways in which a showing of injury may be made, we propose that applicants that are resellers or retailers show not only that they had banks of unrecovered costs, but also provide evidence that they did not pass through to their own customers the additional costs associated with the alleged overcharges. Such applicants might establish that they absorbed the alleged overcharges by showing, for example, that due to market conditions they could not pass through the additional costs. *Office of Enforcement*, 10 DOE ¶ 85,056 (1983); *Office of Enforcement*, 10 DOE ¶ 85,029 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981).

We further propose that a detailed showing of injury not be required of applicants that are ultimate consumers. However, with respect to consumer claimants, the opportunity to make this less-detailed showing will be limited to those applicants that purchased product for their own personal use and to those whose business operations were not subject to DOE regulation. It is evident that applicants that purchased product for their own use would have had no opportunity to pass through additional costs associated with alleged overcharges. With respect to applicants that were consumers of covered product in connection with a business which was not subject to DOE regulation, we have indicated on several occasions that it would be beyond the scope of a Subpart V proceeding to analyze the impact of increased costs of petroleum products on the final prices of these types of businesses. *E.g., Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984). Therefore, these types of consumer applicants need only demonstrate that they purchased a specific quantity of product that was sold by one or more of the named consent order firms during the relevant time period.

On the other hand, refund applicants whose business operations were subject to the DOE regulatory program and which purchased petroleum products consumed as fuel or as raw material will

not be considered as consumers for purposes of the showing of injury. Since we are better able to analyze the impact of increased costs of petroleum products on their operations, these applicants will be expected to establish injury in accordance with the principles we have proposed in this Decision.

Further, a separate, detailed showing of injury may be complicated and burdensome for firms engaged in the resale of petroleum products that purchased relatively small amounts of covered product, and that are therefore claiming smaller refunds. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove the existence of banks of unrecovered costs, or that they did not pass on the alleged overcharges to their own customers. Further, with respect to smaller refund claims, we believe that the costs incident to applications setting forth a detailed demonstration of injury may outweigh the benefits which might be obtained by receiving this additional, detailed data. For example, the high cost of retrieving detailed data demonstrating injury might totally deter firms from filing smaller refund claims. Moreover, the small claims procedure permits the Office of Hearings and Appeals to use its own resources more efficiently. *Peoples Energy Corp.*, 12 DOE ¶ 85,129 (1984). Therefore, we propose that any applicant claiming a refund of $5,000 or less from any single consent order firm identified in the exhibits to the Appendix need not make a separate, detailed showing of injury in order to be eligible to receive a refund. Such an applicant will only be required to submit proof of the amount of product purchased during the consent order period.

A number of the audit files developed with respect to the consent order firms involved in this proceeding specifically identified customers of those firms. Where possible, these identified customers will be served with copies of this Proposed Decision and Order.

Refund applications should not be filed until issuance of a final Decision and Order establishing procedures in this matter. Applicants will be asked to provide all relevant information necessary to establish a claim including specific documentation concerning the date, place, price, and volume of product purchased, the retention of increased costs, and the extent of any injury alleged. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disbursing any of the funds received as a result of the consent orders set out below, we intend to publicize the distribution process in the **Federal Register** and to provide an opportunity for any affected party to file a claim. Comments regarding the tentative distribution process set forth in this Proposed Order should be filed with the Office of Hearings and Appeals within 30 days of publication of this Proposed Order in the **Federal Register**. We will consider at a future date the appropriate disposition of any funds remaining after all successful claims of purchasers have been paid.

It Is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by the consent order firms set forth in the exhibits to the attached Appendix will be distributed in accordance with the foregoing Decision.

Proposed Decision and Order

Thompson Oil Company, Inc.

Appendix

Case Names

Firm	Case No.
Thompson Oil Company, Inc	HEF-0179
Tiger Oil Company	HEF-0180
United Oil Company	HEF-0186
Navajo Refining Company	HEF-0217
Petrolane-Lomita Gasoline Company; Petrolane Incorporated	HEF-0269
Plateau, Inc	HEF-0272

Index to Exhibits

Exhibit	Firm	Page
1	Thompson Oil Company, Inc	1
2	Tiger Oil Company	3
3	United Oil Company	4
4	Navajo Refining Company	5
5	Petrolane-Lomita Gasoline Company; Petrolane Incorporated	8
6	Plateau, Inc	10

Exhibit 1

Name of Consent Order Firm: Thompson Oil Company, Inc., Purcellville, VA 22132
Type of Operation: Reseller/retailer of motor gasoline
Consent Order Case Numbers:
ERA: N00H00189
OHA: HEF-0179
Consent Order Period: May 1, 1979–April 30, 1980
Consent Order Fund: $47,908.26
Alleged Overcharges: Motor Gasoline: $171,446.89
Gallons Sold: Motor Gasoline Annual Sales Estimate: 6,400,000
Per Gallon Refund Amount: $.007486
Identified Purchasers: On March 7, 1983, the Economic Regulatory Administration of the Department of Energy tentatively determined that the amounts of alleged overcharges that may have been experienced by some individual Thompson purchasers were as follows:

Purchaser name and address	Alleged overcharge amount
Dick Ballanger (cabin store), Warrenton, VA 22185	$2,996.61
Ray Edwards Enter, Warrenton, VA 22185	333.18
J.R. Croson's Shell, Warrenton, VA 22185	2,596.82
A-1 Country Store, Warrenton, VA 22185	582.47
Stokley's Store, Purcellville, VA 22132	565.94
Pickel's Store, Purcellville, VA 22132	538.67
Leesburg Shell, King & Fairfax St., Leesburg, VA 22075	3,764.54
Water's Grocery, Ranson, WV 25438	85.10
Jackson's Grocery, Summit Point, WV 25446	1,079.10
Bridge's Shell, Purcellville, VA 22132	4,195.37
White Shell, Warrenton, VA 22185	8,158.73
Circle Service Station, Ranson, WV 25438	6,570.78
Company-owned stations	16,440.54
Total escrow	47,908.26

Exhibit 2

Name of Consent Order Firm: Tiger Oil Company, Yakima, WA 98901
Type of Operation: Wholesale purchaser-reseller of refined petroleum products
Consent Order Case Numbers:
ERA: 000H00428
OHA: HEF-0180
Consent Order Period: March 1, 1979–December 31, 1979
Consent Order Fund*: $4,000
Type of Alleged Violation: Misallocation of motor gasoline
Identified Purchasers:
1. Hy's Service, 1219 West Lincoln, Yakima, WA 98902
2. Wenas Feed & Supply, Rt. 3, Box 3290, Selah, WA 98942
3. Reesman's Dairy, 11 S. "B" Street, Toppenish, WA 98948
4. Collin's Service, 519 S. 1st, Selah, WA 98942

Comments: *The consent order also settled a separate alleged allocation violation, pursuant to which Tiger made a direct refund of $4,200 to the lessee of a Tiger motor gasoline retail outlet. Consequently, of the $8,200 remitted by the firm, $4,000 is available for disbursement in this proceeding.

Exhibit 3

Name of Consent Order Firm: United Oil Company, Hillside, NJ 07205
Type of Operation: Reseller/retailer of refined petroleum products
Consent Order Case Numbers:
Bankruptcy No.: B-78-01868
OHA: HEF-0186
Consent Order Period: November 1, 1973–March 31, 1974
Consent Order Fund: $28,025.58*

Alleged Overcharges: $182,817
Product Covered by Consent Order Fund: No. 2 Oil
Gallons Sold:
Consent Order Period Estimate: 1,044,680
Annual Sales Estimate: 2,507,232
Per Gallon Refund Amount: $.026827
Identified Purchasers:
1. A. Tarricone, Inc., 1337 Saw Mill River Road, Yonkers, NY 10710
2. Rockaway Fuel Oil Company, 729 East 140th Street, Bronx, NY 10454
Comments: *United Oil Company agreed to make direct refunds of $22,974.42 to 28 end-users of No. 4 oil. The firm further agreed to pay $28,025.58 in connection with its sales of No. 2 oil. It is this amount that is subject to the present refund proceeding.
Name of Consent Order Firm: Navajo Refining Company, Dallas TX 75201
Type of Operation: Refiner of petroleum products
Consent Order Case Numbers:
ERA: 672S00136
OHA: HEF-0217
Consent Order Period: September 1, 1973–January 27, 1981
Consent Order Fund: $600,000
Alleged Overcharges: $965,218
Gallons Sold: 3,083,140,989
Per Gallon Refund Amount: $.000195
Identified Purchasers:
1. Ray Bell Oil Co.
2. Bolton Oil Co.
3. Mr. Gas, Inc.
4. T.E. Reed & Sons
5. Wood Oil & Dist. Co.
6. Malco Products, Inc.
7. Conoco, Inc., P.O. Box 2197, Houston, TX 77001
8. Brewer Oil Co.
9. Foster Oil Co.
10. Navajo Stations
11. Whitfield Tank Lines
12. Pride Refining, Inc., P.O. Box 3237, Abilene, TX 79604
13. Sav-Mor Oil Company
14. Bonus Oil Co.
15. McKee Oil Company
16. New Mexico Highway Dept.
17. Hutchens Oil Co.
18. U.S. Petroleum/Douglas Oil
19. Hecla Mining Co.
20. Circle K Corp.
21. E-Z Serve, Inc., 1100 Louisiana, Suite 3140, Houston, TX 77002, Attn: Robert D. Jones, Esq.
22. Arizona Petroleum
23. Continental Car Wash
24. F.H. Shepherd
25. Mars Oil Co.
26. Texas Independent
27. Star Service & Petroleum
28. Kelly Oil Co. Inc.
29. Truckstops Corp. of America, P.O. Box 11749, Nashville, TN 37211
30. Southwest Service Stations
31. El Paso Natural Gas Co.
32. Hillger Oil Company
33. Pioneer Oil Company
34. Ernest Raymond
35. Ritter Oil Company
36. Shepherd Oil Company
37. Yearwood Distributing
38. Piggybank Stations, Inc.
39. Carnes Oil Company
40. Caribou Four Corners, Inc., P.O. Box 457, Afton, WY 83110
41. Glover Distributing Co.
42. Seven Elven Stores
43. Famariss Oil & Rfg. Co.
44. Roberts Oil Co., Inc. P.O. Box 11397 Albuquerque, NM 87192
45. Zia Oil Company
46. Tesoro Oil Company, 8700 Tesoro Drive, San Antonio, TX 78286
47. E.B. Law & Sons
48. Horn Oil Co.
49. U.S.A. Petroleum Corp.
50. Dockery & Collins
51. Westland Corp.
52. J.W. Jones Construction
53. Atex
54. King
55. MCR, Inc.
56. Ray's Major
57. Tenneco Oil Company, P.O. Box 2511, Houston, TX 77001
58. Autotronics
59. Wallace Oil Company
60. Steere Tank Lines
61. The Permian Corporation, P.O. Box 1086, Houston, TX 77001
62. Jack Walstad
63. Rancho Oil Company
64. Carberry Distributing
65. Texas Energy Company
66. Sav-O-Mat Inc.
67. Vickers Petroleum Corp., P.O. Box 2240, Wichita, KS 67201
68. Hornet Oil Company
69. Giant Industries, Inc.
70. Salt River Project Agricultural Improvement and Power District
71. Phelps Dodge Corporation

Exhibit 5

Name of Consent Order Firm: Petrolane-Lomita Gasoline Company, Petrolane Incorporated, Long Beach, CA 90801
Type of Operation: Gas plant owner and operator processor of natural gas liquids and reseller of NGLs and NGLPs
Consent Order Case Numbers:
ERA: 940V00195; 930T00281
OHA: HEF-0269
Consent Order Period: August 19, 1973–January 27, 1981
Consent Order Fund: $3,000,000
Names and Locations of Plants:
1. Signal Hill Plant, Signal Hill, CA
2. Harbor Plant, Long Beach, CA
Alleged Overcharges: $3,596,083.71
Products Sold: NGLs, propane and butane, natural gasoline (NGLPs)
Gallons Sold:
Consent Order Period Estimate: 6,526,041,697
Annual Sales Estimate: 875,000,000
Per Gallon Refund Amount: $.000460
Identified Purchasers:
1. Texaco, Inc., 2000 Westchester Avenue, White Plains, NY 10650
2. Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221
3. Chevron USA, Inc., P.O. Box 8643, San Francisco, CA 94120
4. City of Long Beach, City Hall, 333 West Ocean Blvd., Long Beach, CA 90802
5. C.F. Consolidated Freightways, P.O. Box 3301, Portland, OR 97208
6. McIntosh Propane, Box 3, McIntosh, SD 57641, Attn: Joe A. Mollman

Exhibit 6

Name of Consent Order Firm: Plateau, Inc., Albuquerque, NM 87125
Type of Operation: Refiner of petroleum products
Consent Order Case Numbers:
ERA: 733S02013
OHA: HEF-0272
Consent Order Period: December 1, 1973–January 29, 1981
Consent Order Fund: $1,500,000
Gallons Sold:
Consent Order Period Estimate: 1,752,741,396
Annual Sales Estimate: 244,853,280
Per Gallon Refund Amount: $.000856
Identified Purchasers:
1. Chevron USA, Inc., 575 Market Street, San Francisco, CA 94120, Attn: Mr. G.F. Franciscovich, Manager, Marketing Planning and Services
2. Energy Cooperative, Inc., c/o Ginsburg, Feldman, Weil & Bress, 1700 Pennsylvania Avenue, NW., Washington, D.C. 20006

[FR Doc. 85-13851 Filed 6-7-85; 8:45 am]
BILLING CODE 6450-01-M

Busch Distributors Inc.; Issuance of Proposed Decision and Order; Week of May 6 through May 10, 1985

During the week of May 6 through May 10, 1985, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations,

the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

May 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Busch distributors, Inc., Pullman, Washington, HEE-0147, reporting requirements

Busch Distributors, Inc. filed an Application for Exception from the provisions of the EIA reporting requirement. The exception request, if granted, would relieve Busch of its obligation to file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On May 8, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 85-13853 Filed 6-7-85; 8:45 am]

BILLING CODE 6450-01-M

Canal Refining Co.; Objection to Proposed Remedial Order Filed; Week of May 13 Through May 17, 1985

During the week of May 13 through May 17, 1985, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 3, 1985.

Canal Refining Co., Tulsa, Oklahoma; HRO-0290, Crude oil

On May 16, 1985, Canal Refining Company, 114 E. 5th Street, Tulsa, Oklahoma 74103, filed a Notice of Objection to a Proposed Remedial Order which the DOE Economic Regulatory Administration (ERA) issued to the firm on April 19, 1985. In the PRO the ERA found that during period from July 1980 to January 1981, Canal improperly reported the tier classification of certain of its crude oil receipts to the DOE Entitlements Program, and sold crude oil at prices in excess of its lawful selling price under the regulations.

According to the PRO the violation resulted in $12,546,305.70 of overcharges.

[FR Doc. 85-13854 Filed 6-7-85; 8:45 am]

BILLING CODE 6450-01-M

Cernak Fuel et al.; Issuance of Proposed Decisions and Orders; Week of May 13 Through May 17, 1985

During the week of May 13 through May 17, 1985, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the precedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulation provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in their relations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m. except federal holidays.

May 31, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Cernak Fuel, EASTHAMPTON, MASSACHUSETTS: HEE-0134; reporting requirements

On March 26, 1985, Cernak Fuel filed an Application for Exception from the EIA reporting requirements. The exception request, if granted, would permit Cernak to file form EIA-782B based upon estimated data. On May 15, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted in part.

Cooper Petroleum, Inc., LAURINBURG, NORTH CAROLINA; HEE-0148; reporting requirements

Cooper Petroleum, Inc., filed an Application for Exception from the EIA reporting requirements. The exception request, if granted, would relieve Cooper of its obligation to file EIA Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On May 13, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

People's Oil & Gas Co., Pigeon, MI; HEE-0113
Eastridge Oil Co., English, IN; HEE-0117
Topeka Gas & Fuel, Inc., Topeka, KS; HEE-0128
Jade Petroleum Co., Branson, MO; HEE-0131
Echols Oil Co., Inc., Greenville, SC; HEE-0139; reporting requirements

People's Oil & as Co. and four other firms filed Applications for Exception from the EIA reporting requirements. The exception requests, if granted, would relieve the firms of the requirement that they submit form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On May 14, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception requests be denied.

Russell Daniel Oil Company, Inc., St. Francisville, LOUISIANA; HEE-0137; reporting requirements

Russell Daniel Oil Company, Inc. filed an Application for Exception from the EIA

reporting requirements. The exception request, if granted, would relieve the form of the requirement that it submit Form EIA–821, entitled "Annual Fuel Oil and Kerosene Sales Report," for calendar year 1984. On May 13, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Dwight Sours, ASHLAND, OHIO; HEE–0145; reporting requirements

On April 17, 1985, Dwight Sours filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy (DOE). The exception request, if granted, would relieve Mr. Sours of the requirement to file Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On May 13, 1985, the DOE issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 85–13852 Filed 6–7–85; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–51572; TSH–FRL 2840–4]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 85–12594 beginning on page 21498 in the issue of Friday, May 24, 1985, make the following correction:

On page 21502, in the first column, under **P 85–975**, the first line of the *Toxicity Data* paragraph, "<8,000 mg/" should read ">8,000 mg/".

BILLING CODE 1505–01–M

[OPP–50638; FRL–2838–7]

Issuance of Experimental Use Permits

Correction

In FR Doc. 85–12183 beginning on page 21118 in the issue of Wednesday, May 22, 1985, make the following correction:

On page 21118, in the third column, in paragraph *352–EUP–124*, in the seventh line, "amino]" should be inserted after "carbonyl]" and before "sulfonyl]".

BILLING CODE 1505–01–M

[ORD–FRL–2848–4]

Privacy Act of 1974; System of Record; Deletion

AGENCY: Environmental Protection Agency.

ACTION: Privacy Act of 1974, notification of deletion of system of records.

SUMMARY: The Environmental Protection Agency is deleting a system of records, Professional Expertise Inventory System (EPA–11), that is no longer in use.

DATE: Effective June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Bernard E. McMahon, Chief, Administrative Management Staff, Office of Research Program Management, ORD, telephone (202) 382–7462.

SUPPLEMENTARY INFORMATION: On January 25, 1978, and pursuant to the provisions of the Privacy Act of 1974, there was published in the **Federal Register** (43 FR 3505) a notice of the system of records, Professional Expertise Inventory System (EPA–11). This notice deletes this system of records.

Dated: June 3, 1985.

Howard M. Messner,

Assistant Administrator for Administration and Resources Management.

[FR Doc. 85–13856 Filed 6–7–85; 8:45 am]

BILLING CODE 6560–50–M

[AD–FRL–2703–4]

Assessment of Chlorofluorocarbon-113 as a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the results of EPA's assessment of chlorofluorocarbon-113 (CFC–113) as a potentially toxic air pollutant. EPA has determined that available information on health effects from CFC–113 emissions into the atmosphere is not sufficient to warrant regulation at this time under the Clean Air Act (CAA). The Agency in conducting an assessment of the effect of trace gases, including CFR–113, on stratospheric ozone. The findings of this study may lead to a reassessment of this decision and could result in the regulation of CFC–113 under a variety of authorities including section 157 of the CAA.

ADDRESSES: Docket No. A–84–42 contains the information considered in issuing this decision. This docket is available for public inspection between 8:00 A.M. and 4:00 P.M., Monday through Friday, at EPA's Central Docket Section (LE–131), West Tower Lobby, Gallery 1, 401 M Street, SW, Washington, D.C. 20460. A reasonable charge may be made for copying.

Availability of related information: The Health Assessment Document (HAD) for CFC–113 is available through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Additional information on the availability of this document can be obtained from ORD Publications, CERI-FR, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268 (Telephone: 513–684–7562 commercial/684–7562 FTS). The document number is EPA 600/8–82–002F.

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD–12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (Telephone: 919–541–5645 commercial/629–5645 FTS).

SUPPLEMENTARY INFORMATION: 1,1,1-Trichloro-1,2,2-trifluoroethane, also known as chlorofluorocarbon-113 (CFC–113), is a nonflammable volatile liquid that is used primarily as a solvent for cleaning numerous different kinds of materials. The CAS number, which is a widely accepted numerical identification code for chemicals, for CFC–113 is 76–113–1. EPA began studying the effects of CFC–113 emissions in 1979 because of a concern that it may contribute to stratospheric ozone depletion.

Only two manufacturers currently produce CFC–113 in the United States. Production for 1979 is estimated at about 59,000 megagrams (Mg). The principal uses are: Degreasing, cleaning and drying applications, especially in the electronics industry; dry cleaning of fabric; as a refrigerant; and as an agent for blowing of plastic foam. Listed in Table 1 are estimates of U.S. emissions for various source categories for 1980.

Information on the sources, emissions, environmental fate, and effects of CFC–113 on man and the environment is presented in a Health Assessment Document (EPA 600/8–82–002F) which was reviewed at a public meeting by EPA's Science Advisory Board (SAB) on December 8, 1982 and then further discussed on June 10, 1983. The SAB is an independent group of nationally recognized scientists formed to provide advice to the Administrator. The findings of the Health Assessment Document (HAD) and (1) there are no known or expected adverse health effects expected at or anywhere near ambient concentrations observed in the environment, and (2) information is inadequate to assess the carcinogenic potential of CFC–113 due to direct exposure.

Neurological effects have been reported in people exposed to CFC–113 at concentrations in the range of 2,500 to 4,500 parts per million (ppm) for 30 minutes to 1 hour. Cardiovascular

effects in dogs and non-human primates have been reported at concentrations of 2,000 ppm when exposures were for 6 hours. Although there is very little ambient monitoring data in the literature, the reported values are far below the concentrations causing the above effects. The maximum monitored value reported in the literature is 38 parts per billion (0.038 ppm). This was a grab sample and represents an instantaneous reading. The second highest value reported was 4.16 ppb (0.00416 ppm), also an instantaneous peak reading. Based on available information, adverse health effects from short-term exposures occur at concentrations roughly 100,000 times higher than what is expected in the ambient air. Thus, EPA has concluded that the risk of adverse effects from releases of CFC–113 into the ambient air is highly unlikely.

The SAB requested minor changes to the document but agreed with the major findings identified above. Transcripts of the SAB meetings are available for inspection and copying at the U.S. Environmental Protection Agency, Committee Management Staff (contact Vicki Bailey), A–101 Room 2515, 401 M Street, SW, Washington, D.C. 20460, telephone (202) 382–5036/382–5036 FTS. The final document incorporates the changes requested by the SAB.

TABLE 1.—CFC–113 EMISSIONS ESTIMATES FOR 1980

Source category	Emissions (megagrams/year)
CFC–113 Production	600
Solvent for Cleaning and Degreasing	41,400
Solvent for Dry Cleaning	1,300
Plastic Foams	800
Refrigerant	1,500
Other Uses	1,200
Total	46,800

Source: Callahan (1982).

The Agency has initiated a major study assessing any risks from modification of the abundance and distribution of ozone in the upper atmosphere that might be associated with various increases in trace gases, including CFC–113. This risk assessment is being undertaken in accordance with section 154 of the CAA as well as other authorities under which stratospheric perturbants might be regulated. It will examine the potential impact of stratospheric change on public health and welfare. Two different types of changes will be examined: decreases in ozone column abundance that could allow more damaging ultra/violet radiation to reach the earth's surface, causing damage to biological organisms and man-made materials; and changes in the abundance of ozone at different latitudes that could alter climate.

The study will include analyses of significant factors that influence risks to public health and welfare. Analyses will be done to estimate future emissions of a number of chlorocarbons, bromine compounds, and other stratospheric pollutants including CFC–113, that could affect ozone concentrations. These studies will analyze the future need for these substances in various industries, both in the U.S. and abroad. Analyses will also examine the potential for technological change that could increase or decrease emissions, and the possible range of control options and substitutes for reducing emissions of the various gases contributing to stratospheric modification.

Using various combinations of these emissions estimates, studies will be done to determine the potential trends in ozone abundance and distribution through time, including the potential for non-linear increases in ozone depletion. In addition, studies will evaluate the degree to which monitoring can provide an early indication of ozone change. Analyses will also be performed to assess the effects of changes in ultraviolet radiation on human health, crops, animals and natural biosystems, on man-made materials such as polymers, and on climate.

These studies will be used to help the Agency to determine whether there is a basis for regulating trace gases that contribute to stratospheric modification under several legislative authorities, including section 157 of the CAA.

EPA included CFC–113 among the five solvents designated for control under section 111 of the CAA in the proposed New Source Performance Standard for organic solvent cleaners (45 FR 39766, June 11, 1980 and 46 FR 22768, April 21, 1981) because of a concern that CFC–113 may contribute to stratospheric ozone depletion. EPA is addressing the ozone depletion issue through the comprehensive analysis described above, and has not completed its review of the need to further regulate CFC–113 to protect against stratospheric ozone depletion.

It should be noted that CFC–113 is considered by EPA to be a hazardous waste under some conditions as defined by 40 CFR Part 261.31. Wastes including CFC–113 must be managed in accordance with requirements adopted by EPA or States in accordance with the Resource Conservation and Recovery Act (see 40 CFR 260–271). EPA has also regulated CFC–113 under the Toxic Substances Control Act via 40 CFR Part 762. This rule applies to CFC–113 by prohibiting the manufacture, processing, and distribution in commerce of fully halogenated chlorofluorocarbons for those aerosol propellant uses determined "non-essential."

Given the absence of information on adverse effects of CFC–113 at or anywhere near ambient concentrations, EPA has determined that it will not regulate CFC–113 on the basis of direct health effects under the CAA at this time. If studies currently underway or future studies indicate a potential for adverse health or environmental effects from ambient air exposure to CFC–113, EPA will consider further regulation of this substance at that time.

Today's decision is based a judgment that available information on health effects at concentrations measured or estimated to occur in the ambient air as a result of normal operations of the sources is not sufficient to warrant regulation. This is consistent with EPA's general approach to regulation of pollutants under the Clean Air Act which has focused on known or probable effects on public health or welfare resulting from emissions that do or are reasonably expected to, actually occur.

References

Callahan, Michael, Chairman, TSPC Solvents Work Group #2, Memorandum to Elizabeth Anderson and Arnie Edelman, "Draft Exposure Assessment for TSPC Solvents", Draft Materials Balances Tables from Toxic Substances Priority Committee, Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, D.C., February 5, 1982.

U.S. Environmental Protection Agency, (1983). Health Assessment Document for 1,1,2-Trichloro-1,2,2-Trifluoroethane (Chlorofluorocarbon CFC–113). Office of Health and Environmental Assessment, Washington, D.C., EPA 600/8–82–002F.

Dated: June 3, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85–13869 Filed 6–7–85; 8:45 am]

BILLING CODE 6560–50–M

[AD–FRL–2703–5]

Assessment of Methyl Chloroform as a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the results of EPA's assessment of methyl chloroform (1,1,1-trichloroethane) as a potentially toxic air pollutant. EPA has

determined that information on health effects from methyl chloroform (MC) is not sufficient to warrant regulation under the Clean Air Act (CAA). The Agency will reevaluate this decision, if new studies indicate a potential health risk to the public from exposure to MC in the ambient air. The Agency is conducting an assessment of the effect of trace gases, including MC, on stratospheric ozone. The findings of this study may lead to a reassessment of this decision and could result in the regulation of MC under a variety of authorities including section 157 of the CAA.

ADDRESSES: Docket No. A–84–41 contains the information considered in issuing this decision. This docket is available for public inspection between 8:00 A.M. and 4:00 P.M., Monday through Friday, at EPA's Central Docket Section (LE–131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

Availability of related information: The Health Assessment Document (HAD) for MC is available through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Additional information on the availability of this document is available from ORD Publications, CERI–FR, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268 (telephone: 513–684–7562 commercial/684–7562 FTS). The document number is EPA 600/8–82–00 3F.

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD–12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (telephone: 919–541–5645 commercial/629–5645 FTS).

SUPPLEMENTAL INFORMATION: Methyl chloroform (MC) also known as 1,1,1-trichloroethane, is a volatile chlorinated organic solvent used extensively in the U.S. for metal degreasing and cleaning. It is also used as an ingredient in adhesives and coatings, and as a cleaning agent for electronic circuit boards. The CAS number, a widely accepted numerical code for chemicals, is 71–55–6 for MC.

Three manufacturers produce MC in the United States. Production volume in 1982 (the most recent data) is estimated at about 268,000 megagrams (Mg). That production is distributed approximately as follows: 60 percent used for metal degreasing and cleaning; 20 percent used in coatings, adhesives and aerosols; 8 percent used in the cleaning of electronic circuit boards; and 12 percent exported.

Table 1 lists nationwide emissions estimates for various source categories in 1978 (the most recent comprehensive emissions estimates). Production (and thus emissions) is estimated to have decreased about 5% between 1978 and 1982. Of the MC initially released to the environment, about 87 percent is emitted into the ambient air, about 11 percent is disposed of in solid waste and about 2 percent is released directly into waterways. Growth of MC production is not expected to exceed about 3 percent per year over the long-term.

TABLE 1.—METHYL CHLOROFORM EMISSIONS ESTIMATES FOR 1978

Source category	Emissions (milligrams per year)
Production of MC	600–800
Metal cleaning	157,000–168,000
Aerosols	14,000–18,000
Miscellaneous solvent cleaning and use in adhesives	35,000–61,000
Total	206,600–247,800

Source—Callahan (1982), EPA (1982).

EPA began studying the effects of MC emissions in 1979 because of a concern that it may pose a threat to public health from possible direct carcinogenic effects, and that it may contribute to stratospheric ozone depletion. Information on the effects of MC on man and the environment is presented in a Health Assessment Document (HAD) (EPA 600/882–003F) That was made available for public review and comment on April 28, 1982 (47 FR 17860). The HAD was reviewed at public meetings by EPA's Science Advisory Board (SAB) on September 28–29, December 8, 1982, and June 10, 1983. The SAB is an independent group of nationally recognized scientists formed to provide scientific advice to the Administrator. The findings of the HAD are that (1) the likelihood of adverse health effects resulting from chronic exposure to MC at concentrations encountered in the ambient air are extremely low based on presently available data, and (2) on the basis of animal bioassays performed to date and in the absence of epidemiological information, it is not possible to determine its carcinogenic potential for humans due to direct exposure. The SAB requested minor changes to the document at the second review but agree with the major findings. Transcripts of the SAB meetings are available for inspection and copying at the U.S. Environmental Protection Agency, Committee Management Statt (contact Vicki Bailey, A–101, Room 2515, 401 M Street, SW., Washington, D.C. 20460, telephone (202) 382–5036/382–5036 (FTS)). The final document incorporates changes requested by the SAB.

MC exposure has been associated with a number of adverse effects at concentrations significantly higher than are expected in the ambient air. Acute effects (disturbances of equilibrium from single short-term exposures (1–2 hours) are not likely to occur until 1000 parts per million (ppm) are reached. Slight changes in perception and the obvious presence of an odor were reported among subjects exposed for less than 4 hours to a range of 350–500 ppm. The apparent odor threshold is 100 ppm. Regarding subchronic exposures, the lowest concentration associated with any measurable effects is 250 ppm, where slight histological and biochemical alterations were reported in livers of mice exposed continuously for 24 weeks. Overt signs of toxicity (liver necrosis) were not observed until concentrations reached 1000 ppm.

The HAD reports a maximum ambient concentration of 64 parts per billion (ppb) in an industrialized area. This value is a point estimate during a 24-hour sampling period, and the average concentration during that sampling time is 32 ppb. The maximum ambient concentration estimated, based on limited dispersion modeling, to which anyone would be exposed within 50 kilometers of sources is about 9 ppb (annual average). Based of available information, adverse health effects from short term exposures occur at concentrations roughly 10,000 times higher than what is expected in the ambient air. Thus, EPA has concluded that the risk of adverse health effects from releases of MC into the ambient air is highly unlikely.

The Agency has initiated a major study assessing any risks from modification of the abundance and distribution of ozone in the upper atmosphere that might be associated with various increases in trace gases, including CFC–113. This risk assessment is being undertaken in accordance with section 154 of the CAA as well as other authorities under which stratospheric perturbants might be regulated. It will examine the potential impact of stratospheric change on public health and welfare. Two different types of changes will be examined: decreases in ozone column abundance that could allow more damaging ultra-violent radiation to reach the earth's surface, causing damage to biological organisms and man-made materials; and changes

in the abundance of ozone at different altitudes that could alter climate.

The study will include analyses of significant factors that influence risks to public health and welfare. Analyses will be done to estimate future emissions of a number of chlorocarbons, bromine compounds, and other stratospheric pollutants including CFC–113, that could affect ozone concentrations. These studies will analyze the future need for these substances in various industries, both in the U.S. and abroad. Analyses will also examine the potential for technological change that could increase or decrease emissions, and the possible range of control options and substitutes for reducing emissions of the various gases contributing to stratospheric modification.

Using various combinations of these emissions estimates, analyses will be done to determine the potential trends in ozone abundance and distribution through time, including the potential for non-linear increases in ozone depletion. In addition, studies will evaluate the degree to which monitoring can provide an early indication of ozone change. Analyses will also be performed to assess the effects of changes in ultraviolet radiation on human health, crops, animals and natural biosystems, on man-made materials, such as polymers, and on climate.

These studies will be used to help the Agency to determine whether there is a basis for regulating trace gases that contribute to stratospheric modification under several legislative authorities, including section 157 of the CAA.

EPA included MC among the five solvents designated for control under section 111 of the CAA in the proposed new source performance standard for organic solvent cleaners (45 FR 39766, June 11, 1980 and 46 FR 22768, April 21, 1981) because of a concern that MC may pose a carcinogenic risk to the public, and that it may contribute to stratospheric ozone depletion. Regarding carcinogenic risk, the proposal identified concern based on "* * * positive as well as negative results in short-term mutagenicity and cell transformation tests" (45 FR 39768). Positive mutagenicity studies are considered screening studies for evaluating potential carcinogens since many chemical carcinogens also cause gene mutations. The proposal further indicated that the findings were preliminary and subject to change following EPA's review process for the HAD. The review process is now complete as indicated earlier in the notice.

Initial concern with positive results from mutagenicity tests has been alleviated in part because of mutagenic substances present as stabilizers in the test substance in a number of studies. The HAD concludes that commercially available MC has been shown to be only weakly mutagenic in *Salmonella* (a genus of bacteria) and toxic to genetic material of mouse liver cells. The overall conclusion of the HAD regarding carcinogenic potential is that on the basis of animal bioassays performed to date and in the absence of epidemiological information, it is not possible to determine its carcinogenic potential in humans due to direct exposure.

EPA is aware of a bioassay for carcinogenicity recently completed by the National Toxicology Program (NTP) whereby rats and mice were administered MC by gavage (oral intubation). The study is currently undergoing audit because of possible data discrepancies. After the audit is complete and the study has been peer reviewed by NTP's Board of Scientific Counselors, EPA will evaluate the results. If further evaluation suggests that the public may be at increased risk of cancer from exposure to MC in the ambient air, EPA will then reconsider this decision not to regulate MC under the CAA.

It should be noted that MC is considered by EPA to be a hazardous waste under some conditions as defined by 40 CFR Parts 261.31 and 261.32. Wastes including MC must be managed in accordance with requirements adopted by EPA or States in accordance with the Resource Conservation and Recovery Act (see 40 CFR 260–271).

In conclusion, given the absence of information on adverse effects of MC at or anywhere near concentrations found or anticipated in the ambient air, EPA has determined that it will not regulate MC on the basis of direct health effects under the CAA at this time. If studies underway or future studies indicate a potential for adverse health or environmental effects from emissions of MC into the ambient air, EPA will consider further regulation of this substance at that time.

Today's decision is based on a judgment that available information on health effects at concentrations measured or estimated to occur in the ambient air as a result of normal operations of the sources is not sufficient to warrant regulation. This is consistent with EPA's general approach to regulation of pollutants under the Clean Air Act which has focused on known or probable effects on public health or welfare resulting from emissions that do, or are reasonably expected to, actually occur.

Dated: June 3, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85–13871 Filed 6–7–85; 8:45 am]

BILLING CODE 6560–50–M

[A–10–FRL–2848–8]

Availability of Draft Report; State of Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft report.

SUMMARY: By this Notice, EPA announces the availability of the draft report on the technology for the control of lead emissions at the Bunker Limited Partnership combined lead and zinc smelter in Kellogg, Idaho. The public is invited to submit written comments to the record which will be held open for a period of thirty days.

DATE: Comments must be postmarked on or before July 10, 1985.

Comments should be addressed to: Laurie M. Kral, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

ADDRESSES: Copies of the draft report may be examined during normal business hours at:

Air Programs Branch, (10A–84–6), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

Kellogg Library, 16 West Market Avenue, Kellogg, Idaho

EPA Idaho Operations Office, 422 West Washington Street, Boise, Idaho

Central Docket Section, 10A–84–6, Environmental Protection Agency, 401 M Street, S.W., West Tower Lobby, Gallery L, Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone (206) 442–4253, FTS 399–4253.

SUPPLEMENTARY INFORMATION: On February 7, 1985 (50 FR 5237), EPA promulgated interim and final emission limits for the control of lead emissions at the Bunker Limited Partnership combined lead and zinc smelter in Kellogg, Idaho. However, in conjunction with that action, EPA reopened the comment period to obtain further information on the availability of the control technology to achieve the final emission limits and to determine, therefore, whether or not an extension

of the attainment date for the national ambient air quality standard for lead is justified under the provisions of Section 110(e) of the Clean Air Act. EPA hired a consulting firm to evaluate the best technology currently available for the control of lead emissions from lead and zinc smelters. EPA has received the draft report on the available control trchnology and is hereby announcing its availability for review and comment. Interested parties are invited to comment on the draft report. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by July 10, 1985 will be considered in preparing the final report.

Dated: May 31, 1985.

L. Edwin Coate,

Acting Regional Administrator.

[FR Doc. 85-13861 Filed 6-7-85; 8:45 am]

BILLING CODE 6560-50-M

[ADL-FRL-2784-4]

Intent To List Chromium or Hexavalent Chromium as a Hazardous Air Pollutant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice describes the results of EPA's preliminary assessment of chromium as a potentially toxic air pollutant. Based on the health and risk assessment described in today's notice, EPA now intends to add either chromium or hexavalent chromium to the section 112(b)(1)(A) list. The EPA will decide whether to add either chromium or hexavalent chromium to the list only after studying possible techniques that might be used to control emissions of chromium compounds and after further assessing the public health risks. The EPA will add chromium or hexavalent chromium to the list if emission standards are warranted.

Through this notice, the Agency is also soliciting information on the potential carcinogenicity of chromium including both the trivalent and hexavalent oxidation states, the potential respiratory non-carcinogenic effects of chromium exposure, the potential for atmospheric transformations between the hexavalent form and the trivalent form, and the sources and emissions of total chromium and hexavalent chromium. This notice does not preclude any State or local air pollution control agency from specifically regulating emission sources of chromium.

ADDRESSES: Submit comments (duplicate copies are preferred) by August 9, 1985 to: Central Docket Section (A-130), Environmental Protection Agency, Attn: Docket No. A-84-43, 401 M Street SW, Washington, DC 20460.

The Central Section is located at the offices of the U.S. Environmental Protection Agency, West Tower Lobby, Gallery I, 401 M Street SW, Washington, DC. The docket may be inspected between 8:00 and 4:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

Availability of related information: The final Health Assessment Document (HAD) for Chromium (EPA-600/8-83-014F, August 1984) is available through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. When ordering, specify the following number: PB 85-115905. The cost is $28.00.

FOR FURTHER INFORMATION CONTACT: Robert Schell, Pollutant Assessment Branch (MD-12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711 (telephone: 919.541-5645 commercial/629-5645 FTS).

SUPPLEMENTARY INFORMATION:

Introduction

Chromium compounds are prevalent in the environment in two oxidation states: hexavalent (Cr^{+6}), which is usually man-made and generally considered more toxic, and trivalent (Cr^{+3}), which is a natural constituent of the earth's crust and is a key component of the glucose tolerance factor, a necessary complex for metabolizing glucose in the body. The major use areas for chromium compounds are: (1) Metallurgical, which accounts for about 57 percent of the chromite consumed, as in making stainless and other alloys; (2) chemical, which accounts for about 27 percent of the chromite ore consumed, as in making pigments, chromic acid, and chemicals for corrosion control; and (3) refractory, which accounts for about 16 percent of the chromite ore consumed, as in linings for high temperature furnaces and kilns.

Because of potential adverse health effects associated with chromium exposure, EPA initiated a review to determine the risks to public health from exposure to chromium in the ambient air. The results of this review would be used to determine if chromium should be regulated under the CAA. As an early step in this review, a comprehensive HAD was prepared that summarizes the scientific literature on health effects of chromium exposure. It was review at a public meeting of the Environmental Health Committee of the Science Advisory Board (SAB) on November 10, 1983. The SAB is an independent group of recognized scientists and technical experts that provide scientific advice to the Administrator. The SAB concurred with the major findings of the HAD, including the finding that there is sufficient evidence from the combined human and animal data to consider at least some (Cr^{+6}) compounds to be carcinogenic in people. A transcript of the SAB meeting is available for inspection and copying at the U.S. Environmental Protection Agency, Committee Management Staff (contact Janet Workcuff), A-101, Room 2515, 401 M Street, SW., Washington, DC 20460 (telephone: 202-382-5036 commercial/382-5036 FTS).

Sources and Emissions

Since chromium is found in the earth's crust, it is emitted during processes that utilize ores and during combustion of fossil fuels. It is also emitted during processes that manufacture or use chromium chemicals, during refractory production and during waste incineration. Information is not adquate to specify the form (Cr^{+6} or Cr^{+3}) being emitted from most of these sources or the relative quantities of each. It is likely that most source categories emit a mixture of the two forms, and that there is variability in the relative quantities of the two forms emitted within source categories and in some cases at various points within a facility. Listed in Table 1 are identification of source categories and preliminary estimates of annual emissions. Further study is underway to identify additional source categories and to improve these emissions estimates.

There is great uncertainty in many of these estimates. For example, there is much variability in the chromium content of coal being burned; thus emissions are highly variable. For Table 1, one value was assumed to represent the chromium content of all coal being burned. The EPA has initiated a study to refine many of these estimates. It should be noted that a number of the identified source categories are already reducing emissions of chromium through equipment installed to control total suspended particulate matter. Two of the source categories, chrome plating and cooling towers, are generally not well controlled because they emit chromium in the form of an aerosol mist rather than as solid particulate matter.

TABLE 1.—SUMMARY OF CHROMIUM EMISSIONS

Source category	Estimated number of sources	Estimated emissions (megagrams per year)
Chrome Plating	9,750	50
Refractory Production	35	90
Chemicals Production	3	450–900
Steel Production	112	2,870
Municipal Incineration	129	25
Sewage Sludge Incineration	141	30
Ferrochrome Production	1	43
Cement Production	163	15
Ore Refining	1	3
Coal and Oil Combustion:		
Power Plants	1,100	560
Industrial Boilers	165,000	840
Commercial and Residential Heating	16,800,000	323
Cooling Towers	Many	300–530

Sources—Brooks (1983), Radian (1984a, 1984b), Blanchard (1984).

Risks to Public Health

The HAD describes several adverse health effects associated with chromium exposure. The effects described below are most often associated with Cr^{+6} compounds; however, in many cases people were exposed to mixtures of both Cr^{+6} and Cr^{+3}. The HAD notes that adverse effects are more often associated with Cr^{+6} than Cr^{+3} because Cr^{+6} compounds tend to cross biological membranes fairly easily and thus are usually absorbed more readily than Cr^{+3} compounds. Many Cr^{+6} compounds are strong oxidizers, which explains much of their irritating and toxic properties.

A number of adverse respiratory effects, in addition to lung cancer, have been associated with exposure to chromium by inhalation in the work place. These include perforation of the nasal septum, irritation of the mucosa of the respiratory tract, pneumoconiosis, bronchitis, and asthma-like symptoms. Irritations of the respiratory tract and perforation of the nasal septum are believed to occur after several months' exposure at 100–200 $\mu g/m^3$ when the chromium compound is chromic acid. There is some limited evidence which suggests that these effects may occur at lower concentrations. It is, however, not possible to determine exposure thresholds for these and other respiratory effects due to the lack of adequate data in the literature.

The HAD notes that both Cr^{+6} and Cr^{+3} have been reported to result in birth defects such as cleft palate, hydrocephaly and other skeletal defects in laboratory animals. These findings must, however, be weighed against the fact that such effects were observed when the dose was administered by intravenous and intraperitoneal injection and generally when acute maternal toxicity resulted. These factors introduce considerable uncertainty in determining the relevance to lower environmental exposures.

Studies in laboratory animals also reported testicular degeneration when Cr^{+6} and Cr^{+3} were administered intraperitoneally. The effect was more pronounced with Cr^{+3}. As with teratogenicity studies, the high dose, combined with the unnatural route of exposure, places great uncertainty on the significance of the results for environmental exposures.

Because of the seriousness of the effect and the strength of health evidence, lung cancer via the inhalation route of exposure is the effect of most concern to EPA at this time. A number of epidemiological studies of chromate production workers have demonstrated an association of exposure to chromium compounds with lung cancer. Whether the association implicates Cr^{+6} alone, or Cr^{+3} as well, is not definitively addressed by these studies. The reason that these studies are so convincing is because of the very high risk of lung cancer observed, the consistency of the results by different investigators in different countries, a clear dose-response relationship, and the specificity of the tumor site (i.e., the lung). In addition to chromate production workers, several studies with chrome pigment workers also suggested an association with chromium exposure and lung cancer. It should be noted that although chromium exposure by inhalation has been associated with an increased incidence of lung cancer, there is no current evidence that associates exposure via ingestion with an increased risk of cancer.

Cr^{+6} is believed to be the form responsible for the carcinogenic response because of its generally positive results in a number of animal bioassays and mutagenicity tests. Cr^{+3} compounds have not been as extensively studied and the studies that have been done are inadequate to judge the carcinogenic potential. However, those tests that have been conducted are more often than not negative. The HAD concluded that using the International Agency for Research on Cancer classification scheme, the level of carcinogenic evidence available for the combined animal and human data would take place Cr^{+6} compounds into Group 1, meaning there is sufficient evidence fo the carcinogenicity of these compounds (EPA 1984, IARC 1980). The data are inadequate to classify Cr^{+3} compounds as to their carcionogenicity.

The upper-bound lifetime risk of cancer due to breathing air containing 1 $\mu g/m^3$ of Cr^{+6} chromium compounds is estimated to be 1.2×10^{-2}. This means that if a person were continuously exposed to 1 $\mu g/m^3$ of Cr^{+6} compounds over his or her lifetime (assumed to be 70 years), the chance of getting lung cancer is not likely to exceed 1.2 in 100. If all the chromium emitted into the air from the source categories listed in Table 1 is assumed to be as potent a carcinogen as Cr^{+6}, the number of lung cancer cases associated with chromium exposure is estimated at approximately 285 per year. Based on this assumption, the upper-bound lifetime risk to the most exposed population is estimated at 1.6 chances in 10. In addition to some other conservative assumptions, these estimates are believed to be high because of the assumption that all chromium emitted is Cr^{+6}. The EPA, as stated earlier in the notice, has initiated an extensive study to better understand the amount of Cr^{+6} and the total chromium being emitted from the identified source categories.

Public Exposure

Estimating public exposure to Cr^{+6} is complicated by the fact that EPA is not aware of any reliable ambient air monitoring method currently available that allows distinguishing between the two forms of chromium. Although there are methods available to quantify exposures in the work place, the detection limit is too high for concentrations expected in the ambient air. Dispersion modeling is another method used for estimating exposure; however, there is virtually no information available on the relative quantities of Cr^{+6} and Cr^{+3} being emitted from the various source categories. Therefore, all estimates are based on exposures to total chromium.

Monitoring of the air in some non-source dominated rural and urban areas of the country has shown annual average chromium concentrations to be in the range of 0.0052 to 0.1568 $\mu g/m^3$. The maximum concentration reported during any one 24-hour measurement was 0.6839 $\mu g/m^3$ (EPA 1984). The EPA has also performed dispersion modeling to estimate the maximum concentration likely for people living near large sources. The maximum annual average concentration predicted was 13.5 $\mu g/m^3$.

Call for Information

The EPA seeks information on the following questions:

1. Are there adverse health effects other than cancer associated with exposure to any chromium compounds via inhalation at concentrations below 100 $\mu g/m^3$?

2. Are there adverse health effects associated with exposure to Cr^{+3}?

3. Does Cr^{+3} transform in the atmosphere or in the environment to Cr^{+6} and vice versa?

4. Is there an available ambient air monitoring technique specific for Cr^{+6}?

5. Are there sources other than those listed in Table 1 that are likely to emit chromium into the air?

6. What are the locations, emission rates and control equipment in place on chromium sources?

7. What is the relative quantity of Cr^{+6} and Cr^{+3} being emitted from chromium sources?

8. Would there be serious enforcement or implementation problems (such as measurement of Cr^{+6}) associated with establishing emission standards for $^{+6}$ only?

People with information to submit should either provide this information by [60 days from this date] or notify the Agency by [60 days from this date] that they will be providing this information. Information should be submitted in duplicate to the Central Docket Section (A-130), Environmental Protection Agency, Attn: Docket No. A-84-43, 401 M Street, S.W., Washington, D.C. 20460.

Section 112(b)(1)(A) of the Clean Air Act provides that the Administrator shall maintain "* * * a list which includes each hazardous air pollutant for which he intends to establish an emission standard under this section." In deciding whether to establish such emissioin standards for carcinogens, EPA considers both public health risks and the feasibility and reasonableness of control techniques [e.g., 49 FR 23522; 23498; 23558 (June 6, 1984) (emission standards for benzene)].

Based on the health and risk assessment described in today's notice, EPA now intends to add either chromium or Cr^{+6} to section 112(b)(1)(A) list. The EPA will decide whether to add either chromium or Cr^{+6} to the list only after studying possible techniques that might be used to control emissions of chromium compounds and after further assessing the public health risks. The EPA will add chromium of Cr^{+6} to the list if emission standards are warranted. The EPA will publish this decision in the **Federal Register.**

Miscellaneous: Chromium and chromium compounds are currently listed as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) section 101(14). The statutory Reportable Quantity (RQ) for chromium metal is listed as one (1) pound. Various specific chromium compounds have been assigned a RQ of 1,000 pounds by rulemaking under the authority of section 311 (b)(4) of the Clean Water Act (chromic acetate, chromic acid, chromic acid and calcium salt, chromic sulfate and chromous chloride) [48 FR 23578 and 50 FR 13456-13506]. With regard to chromium metal, no reporting of massive forms of this substance is required if the diameter of the pieces of the substance released is equal to or exceeds 100 micrometers (0.004 inches).

Pursuant to CERCLA section 103 (a), any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally-permitted release or normal application of a pesticide) of a hazardous substance from such vessel or facility in a quantity equal to or exceeding the RQ determined in any 24-hour period, immediately notify the National Response Center (NRC): (800-424-8802; in the Washington, DC metropolitan area at, 202-426-2675).

Since chromium and various chromium compounds are already listed specifically by CERCLA authority as hazardous substances which require reporting of such releases equaling or exceeding an RQ to all media, this notice poses no additional burden on the regulated community, the government or the public. However, all parties are given notice here that such a requirement for reporting exists under the authority of CERCLA. For additional information on CERCLA hazardous substance reporting, see 48 FR, 23552, and 50 FR 13456-13522.

Under Executive Order 12291, EPA must judge whether this action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it imposes no additional regulatory requirements on States or sources. This proposal was submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB and any EPA responses are available in the docket. Pursuant to 5 U.S.C. 605(6), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it imposes no new requirements. This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980.

References

Blanchard, Karen L. (1984). Risk Assessment for Chromium Emissions from Fuel Combustion Sources, Memorandum to Files, EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. November 19, 1984

Blanchard, Karen L. (1985). Chromium Exposure and Risk Estimates for Selected Categories of Stationary Sources, Memorandum to Files, EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. January 23, 1985

Brooks, Gary (1983). Estimates of Population Exposure to Ambient Chromium Emissions, Radian Corp. EPA Contract No. 68-02-3818, Work Assignment No. 2, October 1983

Environmental Protection Agency [EPA] (1984). Health Assessment Document for Chromium, EPA-600/8-83-014F, Environmental Criteria and Assessment Office, Research Triangle Park, NC 27711, August 1984

International Agency for Research on Cancer (1980). IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Humans—Some Metals and Metallic Compounds, Vol. 23, World Health Organization, pp. 205-323

Radian Corp. (1984a). Addendum to "Estimates of Population Exposure to Ambient Chromium Emissions," October 1983. Final Report. Prepared for Karen L. Blanchard, Pollutant Assessment Branch, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711

Radian Corp. (1984). Methodology for Estimating Exposure to Arsenic, Beryllium, Cadmium, Chromium, and Nickel from Coal and Oil Combustion, Technical Note, EPA Contract No. 68-02-3515, Work Assignment No. 31, Sept. 1984

Dated: June 3, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85-13860 Filed 6-7-85; 8:45 am]

BILLING CODE 6560-50-M

[AD-FRL-2667-8]

Pilot Program on Acrylonitrile

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of pilot program.

SUMMARY: The Environmental Protection Agency has completed a preliminary analysis of acrylonitrile (AN) as a toxic air pollutant. This notice announces that results of that analysis and the Agency's Pilot Program to negotiate with appropriate State and local air pollution control agencies to further analyze certain AN emitting sources to determine if additional controls are warranted.

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD-12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (Telephone: (919) 541-5645).

SUPPLEMENTARY INFORMATION: Acrylonitrile (AN) is a relatively volatile organic liquid that is used principally as a raw material feedstock in the synthesis of several major synthetic fibers and plastics. Concern about the

safety of AN first surfaced in 1976 during the testing required by the Food and Drug Administration to permit the use of AN in food packaging material. In later 1977, EPA initiated an effort to analyze the carcinogenic potential of acrylonitrile and to evaluate potential health risks to the general population from exposure to concentrations of acrylonitrile in the ambient air. The result of this effort was reviewed by the Subcommittee on Airborne Carcinogens of the Science Advisory Board (SAB) on September 5, 1980. The SAB is an independent group of nationally recognized non-goverment scientists which provides independent advice and critical review of scientific issues before the Agency.

In response to the comments of the SAB and in order to have the best scientific basis available for regulatory decisions, the assessment of the carcinogenic potential of acrylonitrile was expanded to provide a multi-media assessment consisting of scientific data regarding all health consequences of acrylonitrile, as well as relevant preliminary information on sources of emissions, environmental transport and fate, ambient concentrations, potential public exposures, and human absorption and metabolism. The expanded assessment resulted in a report entitled "Health Assessment Document for Acrylonitrile." This report was made available for public review and was reviewed at public meetings held by the Environmental Health Committee of the SAB on August 3, 1982, December 9, 1982, and June 10, 1983. The Health Assessment Document for Acrylonitrile, October 1983, EPA–600/8–82–007F, is available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487–4650. The NTIS publication number and cost are: PB84–149152, $26.50.

The report categorized the animal and human evidence of carcinogenicity according to criteria established by the International Agency for Research on Cancer (IARC), finding that there is "sufficient" evidence that acrylonitrile is carcinogenic in animals, and between "limited" and "sufficient" evidence that acrylonitrile is carcinogenic in humans. Combining the animal and human evidence, acrylonitrile was characterized, using IARC criteria, as "probably carcinogenic in humans." The SAB agreed with the report's findings regarding the carcinogenicity of acrylonitrile.

This characterization is based on: (1) The findings of three positive drinking water rat bioassays and one positive rat gastric intubation study; (2) the statistically significant positive findings of respiratory cancer in four epidemiologic studies; (3) the positive mutagenic evidence in bacteria and sister chromatid exchange tests; (4) the *in vitro* evidence of interactions of acrylonitrile and/or its metabolites with DNA; and (5) acrylonitrile's structural similarity to vinyl chloride, a known animal and human carcinogen. The Health Assessment Document also reports that non-fatal intoxication (e.g., headache, nausea, irritability) by AN has been reported in workers exposed to concentrations as low as 16 ppm for periods of approximately thirty minutes. Other effects have been reported in animals but at concentrations higher than those reported to cause non-fatal intoxication. These data, coupled with the fact that acrylonitrile is emitted to the atmosphere from some plants and that a number of people residing near those sources are exposed to relatively high concentrations of AN, indicate the need to consider controlling acrylonitrile emissions to the ambient air from those plants which could subject individuals to health risks.

Preliminary analyses have been made of the major industries that manufacture or use acrylonitrile. Emission information was provided by these industries and EPA estimated emission levels for each source category associated with current levels of control.

Using the lineraized relative risk model for human data and the linear multistage model for animal data, three unit risk estimates for air have been calculated: one based on a human occupational study, and two based on rat cancer bioassays. Using the risk number from the human data as the most plausible estimate of unit risk (the largest of the three estimates), and current AN emission rates supplied by industry, the lifetime cancer risk to a hypothetical individual exposed to the single highest estimated annual average ambient concentration of AN is estimated to be 3.8 chances in a thousand (3.8×10^{-3}). Three plants pose individual risks greater than 10^{-3}, ten in the 10^{-3} to 10^{-4} range and the remainder less than one chance in ten thousand (1.0×10^{-4}). In addition, less than one cancer incidence every two years is estimated for the industry as a whole at current AN emission levels. The preceeding risk estimates are subject to the same uncertainties accociated with all quantitative risk assessments for toxic air pollutants.

The EPA has also performed a preliminary analysis using a short-term dispersion model to examine the potential for AN emissions to cause ambient concentrations approaching levels associated with non-carcinogenic health effects. For the most part, this analysis employed conservative, worst-case parameters: for example, worst-case meteorology was used, and the plant selected for analysis was that facility which had produced the highest estimated annual average concentration to which any individual was exposed, using the Human Exposure Model. The highest 1-hour concentration (12 ppm) estimated using this conservative procedure was approximately equal to that associated with such health effects as headache, nausea, and irritability in workers exposed to AN. Thus, it appears that furher analysis of the potenial for non-cancer health effects to occur in the general population around AN-emitting facilities may be needed. The EPA will encourage the State and local agencies performing evaluations under this program to examine this potential closely, and will provide technical assistance for analyses.

Because the estimated national aggregate cancer risks are relatively low (i.e., one cancer incidence every two years) and because AN emissions appear to be localized and limited, a national regulatory program does not appear to be the best approach to protecting public health. In the Administrator's judgment, the limited and localized nature of AN is more efficiently addressed through State and local controls, with EPA providing technical and scientific assistance to the affected State and local air pollution control agencies. This approach allows tailoring of individual regulations to the degree of any public health problem, builds upon the unique strengths of the Federal and the State and local governments, will likely result in faster regulation of AN sources, and will result in a conservation of EPA resources. Applying this approach on a pilot basis allows EPA to test an approach for handling pollutants which relies upon State/local agencies to evaluate and, if appropriate, regulate AN-emitting sources. In addition, this approach provides for controls more related to plant-specific risks, possibly optimizing costs and benefits more than the traditional approach used by EPA. In many cases, this program will simply build upon regulatory requirements already in place as a result of control designed to attain and maintain the national ambient air quality standard for ozone. Discussions with affected State/local agencies have indicated that they are willing to become more involved with EPA in the control of toxic

air pollutants and welcome support and guidance by EPA on the regulation of AN. Based on these preliminary discussions, several States have already initiated a review of their programs for AN.

The EPA's pilot program involves negotiating with each of the 14 States or local air pollution control agencies with jurisdiction over the area containing plants in any of the four major AN source categories. These four source categories are:

—Acrylonitrile monomer
—Styrene-acrylonitrile and acrylonitrile butadiene-styrene resins
—Acrylic and modacrylic fibers
—Nitrile rubbers and elastomers

The discussions will address the responsibilities of both the State or local agency and EPA to ensure that each AN source in the four major source categories is analyzed to determine if additional emission controls are necessary. It is anticipated that the discussions will be documented in a Memorandum of Understanding (MOU) or letter of intent with each State or local agency involved.

A number of elements will, at a minimum, be required in all MOUs. These elements include such items as the legal authority for any control that may be necessary, a schedule for the evaluation, specification of the kind of technical evaluation that will be performed, as well as the mechanism that will be employed for informing the public of the results of the evaluation. The details of the MOU regarding the authority to control AN sources, the procedures (including public participation) to be followed in analyzing sources, the amount and kind of technical support required from EPA, and the time required for States to investigate and regulate (if appropriate) the AN sources will all be established after discussion with each affected agency.

Under this pilot program the ultimate decision of whether to require additional control as well as the basis for requiring such control will be the responsibility of the State/local air agency and would not be subject to approval/disapproval by EPA, although EPA will negotiate a date certain by which the State/local agency must inform EPA of the results of their evaluation and ensure public disclosure of the results. If a State chooses not to accept the responsibility of evaluating AN sources or if the affected agency fails to fulfill their commitments, EPA will complete the evaluation and determine the need for regulation under the Clean Air Act or other appropriate Federal authority (e.g., Toxic Substances Control Act). Where control is determined to be necessary, appropriate regulations will be developed.

In summary, by negotiating with States to evaluate AN sources through a process involving public participation to determine the need for regulation, and by reserving the use of appropriate Federal authorities in the event the State/local agencies do not accept this responsibility, EPA is implementing a pilot program to protect the public from health risks associated with ambient AN emissions.

Upon completion of the negotiations with the State/local agencies, EPA will summarize and announce in the **Federal Register** the results of the negotiations. Likewise, upon completion of the evaluations, EPA will summarize and publish the findings and future actions resulting from the evaluation of the AN-emitting sources.

Dated: June 3, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85-13865 Filed 6-7-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 207-009955-002.

Title: Star Shipping A/S Joint Service, Chartering and Management Agreement.

Parties:

A/S Billabong
Westfal-Larsen & Co. A/S
Fred. Olsen & Co.
Star Shipping A/S

Synopsis: The proposed amendment would restate the agreement to conform to the Commission's regulations concerning form and format. The parties have requested a shortened review period.

Agreement No. 224-010764.

Title: Alameda Terminal Agreement.

Parties:

Encinal Terminals (Encinal)
California Stevedore and Ballast Co. (CS&B)

Synopsis: Encinal will lease to CS&B premises situated at Berth 5, in the City of Alameda, California. The premises shall be used and operated by CS&B as a shipping terminal in connection with water-borne commerce. CS&B will use the premises for the docking and mooring of vessels, for the loading, unloading, receipt, handling, storage, transporting and delivery of cargo and for uses incidental thereto. CS&B will perform all terminal services at its sole expense and shall retain all revenue therefrom. The lease shall commence on the first day following the determination of the effective date of the agreement by the Commission. It shall run uninterrupted for five years, and, unless terminated, shall continue thereafter on a year to year basis.

Dated: June 5, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-13887 Filed 6-7-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Authorization for Domestic Open Market Operations

In accordance with the Committee's rules regarding availability of information, notice is given that on March 26, 1985, paragraph 1(a) of the Committee's authorization for domestic open market operations was amended to raise from $6 billion to $9 billion the limit on changes between Committee meetings in System Account holdings of U.S. government and federal agency securities, effective immediately, for the period ending with the close of business on May 21, 1985.

Note.—For paragraph 1(a) of the authorization, see 36 FR 22697, November 27, 1971.

By order of the Federal Open Market Committee, June 4, 1985.

Normand R.V. Bernard,

Assistant Secretary.

[FR Doc. 85-13963 Filed 6-7-85; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Domestic Policy Directive of March 26, 1985

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 March 26, 1985.[1]

The following domestic policy directive was issued to the Federal Reserve Bank of New York:

The information reviewed at this meeting suggests that real GNP is currently expanding at a slower pace than in the fourth quarter, with an increased share of domestic spending apparently being met out of imports. Total retail sales rose considerably for January and February combined and housing starts, though declining in February, were above their fourth-quarter pace. However, information on business capital spending suggests less rapid expansion in early 1985. Business inventory investment continues at a moderate rate. Industrial production declined on balance in January and February and, with employment falling in the manufacturing sector, total nonfarm payroll employment increased at a somewhat reduced pace. The civilian unemployment rate, at 7.3 percent in February, was little changed from its level at year-end. Broad measures of prices and the index of average hourly earnings appear to be continuing to rise at rates close to those recorded in 1984.

Since the Committee's meeting in mid-February, the foreign exchange value of the dollar has fluctuated widely in often volatile market conditions. Most recently, the trade-weighted value of the dollar against major foreign currencies has dropped sharply, more than offsetting its rise earlier in the inter-meeting interval. Monetary authorities sold dollars on a large scale during the period, especially in late February and early March. The merchandise trade deficit increased sharply in January from relatively low December and fourth-quarter rates. The current account deficit for the full year 1984 was more than double that recorded in 1983.

Growth in M1 accelerated in February, following relatively rapid expansion in other recent months, but information available through mid-March indicates a considerable slowing. Growth in the broader aggregates moderated in February and appears to be slowing further in March. In January and February expansion in total domestic nonfinancial debt remained relatively rapid, though somewhat below the pace of previous months. Most interest rates have risen somewhat since the February meeting of the Committee.

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 its meeting in February to establish ranges for monetary growth of 4 to 7 percent for M1, 6 to 9 percent for M2, and 6 to 9½ percent for M3 for the period from the fourth quarter of 1984 to the fourth quarter of 1985. The associated range for total domestic nonfinancial debt was set at 9 to 12 percent for the year 1985. The Committee agreed that growth in the monetary aggregates in the upper part of their ranges for 1985 may be appropriate, depending on developments with respect to velocity and provided that inflationary pressures remain subdued.

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 implementation of policy for the immediate future, taking account of the progress against inflation, uncertainties in the business outlook, and the exchange value of the dollar, the Committee seeks to maintain the existing degree of pressure on reserve positions. This action is expected to be consistent with growth in M1, M2, and M3 at annual rates of around 6, 7, and 8 percent respectively during the period from March to June. Somewhat lesser reserve restraint might be acceptable in the event of substantially slower growth of the monetary aggregates while somewhat greater restraint might be acceptable in the event of substantially higher growth. In either case such a change would be considered in the context of appraisals of the strength of the business expansion, progress against inflation, and conditions in domestic credit and foreign exchange markets. 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 6 to 10 percent.

By order of the Federal Open Market Committee, June 4, 1985.

Normand R. V. Bernard,

Assistant Secretary.

[FR Doc. 85-13964 Filed 6-7-85; 8:45 am]

BILLING CODE 6210-01-M

[1] The Record of policy actions of the Committee for the meeting of March 26, 1985, 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.

First Franklin Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of 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, or to engage in such an activity. Unless otherwise noted, these 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 June 30, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104, Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Franklin Corporation*, Toccoa, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Franklin Bank & Trust, Toccoa, Georgia, a *de novo* bank (formerly First Franklin Savings and Loan Association).

First Franklin Corporation has also applied to acquire First Franklin Financial Corporation, Toccoa, Georgia, thereby indirectly engaging in the activities of making consumer loans, and selling credit life and accident and health insurance in connection with loans written by Applicant's subsidiaries. The insurance will be sold by company's wholly owned subsidiary, Francisco Life Insurance Company, Toccoa, Georgia.

Board of Governors of the Federal Reserve System, June 4, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13961 Filed 6-7-85; 8:45 am]

BILLING CODE 6210-01-M

United Counties Bancorporation et al.; Formations of; Acquisition 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 June 28, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *United Counties Bancorporation*, Cranford, New Jersey; to acquire 22.0 percent of the voting shares of Franklin Bancorp, Somerset, New Jersey, thereby indirectly acquiring Franklin State Bank, Somerset, New Jersey and Hillsborough National Bank, Belle Meade, New Jersey.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago Illinois 60690:

1. *Linden State Bancorp*, Linden, Indiana; to become a bank holding company by acquiring 80 pecent or more of the voting shares of Linden State Bank, Linden, Indiana.

2. *Second National Corporation*, Richmond, Indiana; to acuire 60.12 percent of the voting shares of Bentonville State Bank, Bentonville, Indiana.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Old National Bancorp*, Evansville, Indiana; to acquire through the merger of its wholly owned subsidiary and proposed one-bank holding company, ONB Merger Corps., Evansville, Indiana and Merchants Republic Corp., Terre Haute, Indiana, 100 percent of the voting shares of The Merchants National Bank of Terre Haute, Terre Haute, Indiana.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *USA Bancshares, Inc.*, Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Anna Bancshares, Inc., Anna, Texas, thereby indirectly acquiring 98.6 percent of the voting shares of The First National Bank of Anna, Anna, Texas; 100 percent of the voting shares of Howe Financial Corporation, Howe, Texas, thereby indirectly acquiring Howe State Bank, Howe, Texas; and 100 percent of the voting shares of Plano East National Bank, Plano, Texas.

Board of Governors of the Federal Reserve System, June 4, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13962 Filed 6-7-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Report on Revised System of Records Under the Privacy Act of 1974

AGENCY: General Services Administration.

ACTION: Notification of revised system of records.

SUMMARY: The purpose of this document is to give notice, under the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, of intent to revise a system of records being maintained by GSA. The system of records, Payroll Information Processing System, GSA/PPFM-9, is the revision of Human Resources Files, GSA/PPFM-4. The Human Resources File system of records is being divided into two systems, Personnel Information Resources System (which was published in the **Federal Register** on January 2, 1985) and Payroll Information Processing System. This notice supersedes the related portions of PPFM-4. No additional information or routine uses are created. As no new information is being collected by GSA, the proposed revision is not considered as being within the purview of the provisions of 5 U.S.C. 552a(o) which would require submission of an altered report to Congress and the Office of Management and Budget. PPFM-4 is cancelled when this notice is published.

DATES: Any interested party may submit written comments about this revised system. Comments must be received on or before the 30th day following publication of this notice. The routine use will become effective without further notice on the 30th day following publication of this notice unless comments are received that would result in a contrary decision.

ADDRESS: Address comments to General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. William Hiebert, GSA Privacy Act Officer, telephone (202) 535-7647.

Background

The purpose of this system is to assemble information supporting the day to day operating needs associated with payroll oriented program areas.

The revised system of records is as follows:

GSA/PPFM-9

SYSTEM NAME:

Payroll Information Processing System.

SYSTEM LOCATION:

This system of records is located in the General Services Administration Finance Division in Kansas City, MO, commissions, committees, and small agencies serviced by GSA, and administrative offices throughout GSA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are current and former employees of GSA and of commissions, committees, and small agencies serviced by GSA including applicants for employment and persons in intern, youth employment, and work study programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files in this system are payroll records. They consists of information accumulated by operating officials as well as personnel and finance officials in administering their program areas in matters for or about employees. Also, the system has data necessary to process personnel actions, perform detailed accounting distributions, automatically provide for such tasks as mailing checks and bonds, and prepare and mail tax returns and reports. The system has a large number of records which may include:

a. Employee identification and status data such as name, Social Security number, date of birth, sex, work schedule, and type of appointment.

b. Employee date data such as service computation data for leave.

c. Position and pay data such as pay plan, occupational series, grade, step, salary, organization location, and accounting distribution.

d. Award and suggestion amount data.

e. Employment data such as position description.

f. Payroll data such as time; attendence; leave; Federal, State, and local tax; allotments; savings bonds; and other pay allowances and deductions.

g. Tables of data for editing, reporting, and processing personnel and pay action which include Nature of Action Codes, Organization Table, and Salary Table.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Part III is the authority for the system. Specific authority for use of Social Security numbers is in Executive Order 9397, 26 CFR 31.6011(b)2, and 26 CFR 31.6109–1.

PURPOSES:

To assemble in one system information supporting the day to day operating needs associated with payroll oriented program areas. This system is a comprehensive computerized information system which is patently designed to meet payroll statistic needs of all types and sizes of Government organizations and achieve multiple benefits from each data element introduced into the system. To accomplish the above, the system provides a number of outputs. For the payroll office, outputs include a comprehensive payroll; detailed accounting distribution of costs; leave data summary reports; an employee's statement of earnings, deductions, and leave every payday; State, city, and local unemployment compensation reports; Federal, State, and local tax reports; W–2 wage and tax statements; and reports of withholding and contributions. For the Office of Personnel, outputs include data for reports of Federal civilian employment. The system also outputs data to various agency staff and administrative offices to use for management purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

a. To disclose information to a Federal, State, local, or foreign agency responsible for investigation, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where the agencies become aware of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to a Member of Congress or a congressional staff member in response to an inquiry from that congressional office made at the request of that individual.

c. To disclose information to an expert, a consultant, or contractor of the agency in performing a Federal duty.

d. to disclose information to a Federal, State, or local agency keeping civil, criminal, enforcement, or other information to get information relevant in making a decision on hiring or retaining an employee; issuing a security clearance; letting, a contract; or issuing a license, grant or other benefit.

e. To disclose information to a requesting Federal agency in connection with hiring or retaining an employee; issuing a security clearance; reporting an employee investigation; clarifying a job; letting a contract; or issuing a license, grant, or other benefit by the requesting agency where the information is relevant and necessary for a decision.

f. To disclose infofmation to an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator; exclusive representative or other official engaged in investigating, or settling a grievance, complaint, or appeal filed by an employee.

g. To disclose information to the Office of Mangement and Budget in connection with reviewing private relief legislation at any state of the coordination and clearance process.

h. To disclose a copy of the Department of the Treasury Form W–2, Wage and Tax Statement to the State, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record is provided by a withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury under 5 U.S.C. 5516, 5517, and 5520.

i. To disclose copies of executed city tax withholding certificates to a requesting city official from the Comptroller, General Services Administration (B), Washington, DC 20405.

j. To disclose information to the Office of Personnel for reports of Federal civilian employment.

k. To disclose information to various agency administrative offices who may restructure the data for their management purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folder, card files and cabinets; microfilm records in reels and cabinets; microfiche in cabinets; magnetic tapes and cards in cabinets and storage libraries; and computer records within a computer and attached equipment.

RETRIEVABILITY:

Filed by name and/or social security number at each location.

SAFEGUARDS:

Records stored in lockable containers or secured rooms. Computerized records protected by password system.

RETENTION AND DISPOSAL:

Disposal of records is described in the HB, GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER(S) AND ADDRESS:

Chief, System Staff, Office of Regional Comptroller, General Services Administration (6BCS), 1500 East Bannister Road, Kansas City, MO 64131.

NOTIFICATION PROCEDURE:

Inquiries from individuals should be addressed to the system manager.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the system manager. Individuals must furnish their full name, Social Security number, address, telephone number; and approximate dates and place of employment. For indentification requirements, refer to the agency regulations outlined in 41 CFR Part 105–64.

CONTESTING RECORD PROCEDURES:

GSA rules for contesting the contents and appealing initial decisions are issued in 41 CFR Part 105–64 of the Code of Federal Regulation.

RECORD SOURCE CATEGORIES:

Individuals, other employees, supervisors, other agencies management officials, non-Federal sources like private firms, and data from the systems of records GSA/HRO–37, OPM/GOVT–1, and EEOC/GOVT–1.

Dated: May 31, 1985.

Johnny T. Young,

Acting Director, Information Management Division.

[FR Doc. 85–13903 Filed 6–7–85; 8:45 am]

BILLING CODE 6820–AM–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Research on Methods for Studying Mental Health Service Systems

AGENCY: The National Insitute of Mental Health, HHS.

ACTION: Issuance of an announcement for Research on Methods for Studying Mental Health Service Systems, MH–86–06.

SUMMARY: The National Institute of Mental Health announces the availability of an announcement concerning Research on Methods for Studying Mental Health Service Systems. This announcement is to encourage research directed toward the improvement of methods by which to conceptualize, identify, measure, characterize, analyze, and describe features of mental health service systems at local community, State, or national (including comparisons with other nations) levels. Support may be requested for up to 2 years.

Receipt date of applications:

Applications will be accepted on the receipt dates of November 1, 1985; March 1, 1986; and July 1, 1986. Thereafter, they will be accepted according to the usual Public Health Service schedule and procedures.

For further information or a copy of the announcement, contact:

James W. Thompson, M.D., M.P.H., Chief, Service System and Economics Research Branch

Charles Windle, Ph.D., Chief, Service System Research Program, or

Armand Checker, M.A., Research Statistician, Service System Research Program

National Institute of Mental Health, Parklawn Building, Room 18C–03, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–4233

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85–13909 Filed 6–7–85; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF THE INTERIOR

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Department of the Interior clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Department of the Interior clearance officer and to the Office of Management and Budget Interior Desk Officer, Washington, D.C. 20503, telephone 202–395–7340.

Title: Natural Resources Damage Scoping Survey

Abstract: Respondents provide information on state natural resource trustee concerns for injuries to natural resources from hazardous substances or oil discharge, categorized as to natural resource type, injury type, hazardous waste site, activity or spill incident, and type of contaminant. This information will aid the Department in the development of regulations under section 301(c) of the Comprehensive, Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. 9601 (CERCLA) (commonly known as "Superfund").

Department Form Number: Not applicable—Information requested via letter

Frequency: One time collection

Description of Respondents: State officials responsible for state natural resources and state "Superfund" management.

Annual Responses: 50, one time collection

Annual Burden Hours: 150

Department alternate clearance officer: John Strylowski, 202–343–6191

Mary L. Walker,

Deputy Soliciter.

May 31, 1985.

[FR Doc. 85–13908 Filed 6–7–85; 8:45 am]

BILLING CODE 4310–17–M

Bureau of Land Management

[W–82736]

Coal Lease Offering by Sealed Bid; Carbon County, WY

U.S. Department of the Interior, Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001. Notice is hereby give that certain coal resources in the lands hereinafter described, located in Carbon County, Wyoming will be offered for competitive lease by sealed bid. This offering is being made as a result of an emergency by-pass coal lease application filed by the Medicine Bow Coal Company in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.). The sale will be held at 2:00 p.m., July 8, 1985, in the third floor conference room at the above address.

Processing of the Medicine Bow emergency lease application and the related amendment to the Hanna Basin Management Framework Plan have been completed. This included an environmental assessment (EA) of the proposed coal development and plan amendment. The results of these activities were a finding of no significant environmental impacts from the proposed coal development, the amended planning decision that the Federal coal lands involved are acceptable for further leasing consideration and the decision to offer the Federal coal resources for lease. The emergency lease/plan amendment EA and Record of Decision, including mitigation requirements, are on file in the Wyoming State Office.

This tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value determination of the tract. The minimum bid is $100 per acre. No bid less than $100 per acre will be considered. The minimum bid is not intended to represent fair market value.

The fair market value will be determined by the Authorized Officer after the sale. Sealed bids must be submitted on or before 1:00 p.m., July 8, 1985, to the Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001. Bids received after that time will not be considered.

Coal Offered

The coal resource to be offered consists of all the recoverable coal in the following describe lands located in Carbon County, Wyoming:

T. 23 N., R. 83 W., 6th P. M., Wyoming
Sec. 30: Lots 1, 2, E½NW¼.
T. 24 N., R. 83 W., 6th P. M.
Sec. 28: W½NW¼, S½;
Sec. 29: N½NE¼, NE¼NW¼, NE¼SE¼.
T. 23 N., R. 84 W., 6th P. M.
Sec. 1: Lot 2, SW¼NE¼, SW¼NW¼, SW¼;
Sec. 2: SE¼SE¼;
Sec. 11: NW¼NE¼, SE¼NW¼, E½SW¼, SW¼SW¼;
Sec. 13: SW¼SW¼;
Sec. 14: E½, N½NW¼, SE¼NW¼;
Sec. 24: W½NE¼NE¼, NW¼NE¼, S½NE¼, E½W½, SE¼;
Sec. 25: E½NE¼, N½NW¼;
Sec. 26: E½, E½SW¼;
Sec. 35: E½NW¼.
T. 24 N., R. 84 W., 6th P. M.
Sec. 36: E½SW¼, W½SE¼.

The 2,973.86-acre tract contains an estimated 12.78 million tons of recoverable coal with the following estimated coal quality: BTU—10,468/lb; Sulfur—.479 percent; Ash—8.10 percent; Moisture—12.19 percent. The coal classifies as subbituminous.

Rental and Royalty

The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre and a royalty payable to the United States of 12.5 percent of the value of coal produced by strip or auger mining methods and 8.0 percent of the value of coal produced by underground methods.

Deferred Bonus

Payment of the bonus bid for this lease shall be on a deferred basis. One-fifth of the bonus will be payable on the day of the sale. The balance shall be paid in equal annual installments due and payable on the first four anniversary dates of the lease.

Notice of Availability

Bidding instructions for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the statement and of the proposed coal lease are available at the Wyoming State Office. Case file documents are also available at that office for public inspection. Coal resource information pertaining to this tract is also available for public imspection in the Rawlins District Office, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

Hillary A. Oden,
State Director.

[FR Doc. 85-13906 Filed 6-7-85; 8:45 am]
BILLING CODE 4310-22-M

[M 59615]

Garfield County, MT; Order and Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of conveyance and order providing for opening of public land in Garfield County, Montana (M 59615).

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701, et seq. (FLPMA), to the operation of the public land laws. It also informs the public and interested state and local governmental officials of the issuance of the conveyance document. No minerals were transferred by either party in the exchange.

DATE: At 9 a.m. on July 22, 1985, the lands reconveyed to the United States shall be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. The lands described in paragraph 1 below were segregated from settlement, sale, location and entry, including mining, but not from exchange, by the Notice of Realty Action published in the **Federal Register** on February 23, 1984 (49 FR 6801). The segregation terminated on issuance of the patent.

ADDRESS: For further information contact: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657-6082.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), the following described surface estate was conveyed to Pluhar Ranch Co.:

Principal Meridian, Montana

T. 16 N., R. 40 E.,
Sec. 1, lot 1; and
Sec. 2, SW¼SE¼.
T. 16 N., R. 41 E.,
Sec. 6, lots 1, 2 and 3.
Aggregating 160.69 acres.

2. In exchange for the above selected land, the United States acquired the surface estate of the following lands in Garfield County:

Principal Meridian, Montana

T. 16 N., R. 40 E.,
Sec. 2, lots 1, 2, 3, 4, 6.
Containing 156.52 acres.

3. The values of Federal public land and the non-Federal land in the exchange were both appraised at $10,350 each.

4. At 9 a.m. on July 22, 1985, the lands described in paragraph 2 above that were conveyed to the United States will be open to the operation of the public land laws.

John A. Kwiatkowski,
Deputy State Director, Division of Lands & Renewable Resources.
May 30, 1985.

[FR Doc. 85-13818 Filed 6-7-85; 8:45 am]
BILLING CODE 4310-DN

[OR-20267]

Oregon; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a portion of a land withdrawal for the Vale Reclamation Project continue for an additional 20 years. The lands would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208. (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that the existing land withdrawal made by the Secretarial Order of December 14, 1926, be continued in part for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands involved are located in Northern Malheur County, Oregon, and aggregate 2,707.63 acres.

The purpose of the withdrawal is to protect the Bully Creek Reservoir, Beulah Reservoir, and Vale Main Canal of the Vale Reclamation Project. The withdrawal segregates the lands from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection

with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: May 31, 1985.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-13819 Filed 6-7-85; 8:45 am]

BILLING CODE 4310-33-M

[W-94690]

Wyoming; Invitation for Coal Exploration License; Neil Butte Co.

Neil Butte Company hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning federally owned coal underlying the following described land in Campbell County, Wyoming:

T. 44 N., R. 70 W., 6th Prin. Mer.,
Sec. 2: Lots 3, 4, S½NW¼, N½SW¼, SE¼ SW¼;
Sec. 3: Lots 1, 2, 3, 4, S½N½, E½SW¼, SW¼SW¼, SE¼;
Sec. 5: Lots 3, 4, S½NW¼, SW¼;
Sec. 6: Lots 1, 2, 3, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 8: W½, S½SE¼;
Sec. 9: SE¼SE¼;
Sec. 10: N½, N½SW¼, SW¼SW¼;
Sec. 11: S½NW¼;
Sec. 15: W½W½;
Sec. 17: NE¼, E½SE¼;
Sec. 21: N½N½;
Sec. 22: NW¼NW¼.
T. 45 N., R. 70 W., 6th Prin. Mer.,
Sec. 29: S½S½;
Sec. 30: SE¼SE¼;
Sec. 31: E½SE¼.

Containing 3,514.54 acres.

All of the coal in the above lands consists of unleased Federal Coal within the Powder River Basin known recoverable coal resource area. The purpose of the exploration program is to support Neil Butte Company's interest for Federal coal in all or parts of sections 2, 3, 10 and 11 in T. 44 N., R. 70 W., and verification drilling for reserves in the state lease.

A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (under serial number W-94690): Bureau of Land Management, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82001; The Bureau of Land Management, 951 North Poplar, Casper, Wyoming 82001; and the U.S. Forest Service, Thunder Basin National Grassland, 809 South Ninth Street, Douglas, Wyoming 82633.

This notice of invitation will be published in this newspaper once each week for two consecutive weeks beginning the week of June 10, 1985, and in the **Federal Register.** Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Neil Butte Company no later than 30 days after publication of this invitation in the **Federal Register.**

The written notice should be sent to the following addresses: Neil Butte Company, c/o Mike Elmore, President, P.O. Box 1629, Gillette, Wyoming 82716, and the Bureau of Land Management, Wyoming State Office, Branch of Solid Minerals, P.O. Box 1828, Cheyenne, Wyoming 82003.

The foregoing is published in the **Federal Register** pursuant to Title 43 Code of Federal Regulations, § 3410.2-1(c)(1).

Hillary A. Oden,

State Director.

[FR Doc. 85-13905 Filed 6-7-85; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone (202) 395-7313; with copies to David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646; Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Reimbursement for Certain Geological and Geophysical Data and Information

Abstract: Section 26 of the Outer Continental Shelf Lands Act requires that certain costs be reimbursed to the parties submitting required geologic and geophysical (G&G) data and information requested by the Minerals Management Service (MMS). Under the law, lessees and permittees can be reimbursed for the costs of reproducing any G&G data required to be submitted. In order for the Government to determine the propriety and level of reimbursement, lessees and permittees are required to send a request for reimbursement to the Director, MMS, where it will be reviewed and evaluated. Reimbursement will be made according to appropriate criteria.

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Federal oil and gas lessees and permittees

Annual Responses: 4,000

Annual Burden Hours: 8,000

Bureau Clearance Officer: Dorothy Christopher, (703) 435-6214

Dated: February 25, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 85-13902 Filed 6-7-85; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF INTERIOR

National Park Service

Santa Monica Mountains National Recreation Area Advisory Commission; Meeting

Notice is hereby given that the Santa Monica Mountains National Recreation Area Advisory Commission will hold its regularly scheduled public meeting on Tuesday, June 11, 1985 at 7:30 p.m. at Diamond X Ranch, 26412 Mulholland Drive, Calabasas, California.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact the Superintendent, Santa Monica Mountains National Recreation Area, 22900 Ventura Boulevard, Suite 140, Woodland Hills, California, 91364.

The minutes of the meeting will be available by July 31, 1985.

Dated: May 17, 1985.

Daniel R. Kuehn,

Superintendent.

[FR Doc. 85-13422 Filed 6-7-85; 8:45 am]

BILLING CODE 4310-70-M

Upper Delaware National Scenic and Recreational River, Upper Delaware Citizens Advisory Council; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: June 28, 1985, 7:00 p.m.

ADDRESS: Town of Tusten, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764-0159. (717) 729-7135.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include items regarding continuance of discussion of requirements for a river management plan. The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Council c/o Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764-0159. Minutes of meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware National and Recreational River, River Road, 1¾ miles north of Narrowsburg, N.Y., Damascus Township, Pennsylvania.

Dated: May 27, 1985.

Don H. Castleberry,

Regional Director, Mid-Atlantic Region.

[FR Doc. 85-13958 Filed 6-7-85; 8:45 am]

BILLING CODE 4310-70-M

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations; Proposed Contractual Actions Pending June 1985

The following list of proposed contractual actions supplements the tabulation of pending contractual actions published April 25, 1985, 50 FR 16361, for:

Lower Missouri Region, Bureau of Reclamation, P.O. Box 25247, (Building 20, Denver Federal Center) Denver, CO 80225, telephone (303) 234-3327.

19. New Grattan Ditch Company, Glendo Unit, P-SMBP, Wyoming; Irrigation contract for 250 acre-feet of water.

Upper Colorado Region, Bureau of Reclamation, P.O. Box 11568 (125 South State Street), Salt Lake City, UT 84147, telephone (801) 524-5435.

17. Weber Basin Conservancy District, Weber Basin Project, Utah; Emergency Loan for embankment repairs of the AV Watkins Dam; Estimated cost is $2,800,000.

Dated: June 5, 1985.

Robert A. Olson,

Acting Commissioner of Reclamation.

[FR Doc. 85-13877 Filed 6-7-85; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30615]

Columbus & Greenville Railway Co.—Exemption—Issuance of Note

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 11301 the issuance of a promissory note in the amount of $143,748.84.

DATES: This exemption is effective on June 7, 1985. Petitions to reopen must be filed by June 27, 1985.

ADDRESSES: Send petitions referring to Finance Docket No. 30615 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Robert J. Corber, Steptoe & Johnson, 1330 Connecticut Avenue, NW., 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. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Sterrett did not participate.

Decided: May 31, 1985.

James H. Bayne,

Secretary.

[FR Doc. 85-13875 Filed 6-7-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 Sub-135]

Seaboard System Railroad, Inc.—Abandonment—in Shelby County, TN; Findings

The Commission has issued a certificate authorizing Seaboard System Railroad, Inc. to abandon its 12.9 mile line of railroad between the Shell Plant (milepost 210.7) and Memphis, TN (milepost 223.6) in Shelby County, TN. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-13873 Filed 6-7-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 84-40]

Ronald Dvorkin, M.D., Bronx, NY; Hearing

Notice is hereby given that on August 24, 1984, the Drug Enforcement Administration, Department of Justice, issued to Ronald Dvorkin, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AD3277399, and deny his application, executed on June 18, 1984, for registration as a practitioner under 21 U.S.C. 823(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 10:00 a.m. on Tuesday, July 2, 1985, in Courtroom No. 10, Room 309, U.S. Claims Court, 717 Madison Place, NW., Washington, D.C.

Dated: June 3, 1985.

John C. Lawn,

Acting Administrotor, Drug Enforcement Administration.

[FR Doc. 85-13892 Filed 6-7-85; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 84-49]

Jack H. Pincus, M.D., Monroeville, PA; Hearing

Notice is hereby given that on December 3, 1984, the Drug Enforcement Administration, Department of Justice, issued to Jack H. Pincus, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not deny his application, executed on July 30, 1984, for registration as a practitioner under 21 U.S.C. 823(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 10:00 a.m. on Wednesday, June 26, 1985, in Courtroom No. 10, Room 309, U.S. Claims Court, 717 Madison Place, NW., Washington, D.C.

Dated: June 3, 1985.

John C. Lawn,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 85-13893 Filed 6-7-85; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 84-45]

Harold Lloyd Wright, M.D.; Revocation of Registration and Denial of Application

On October 1, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) directed an Order to Show Cause to Harold Lloyd Wright, M.D., 179-12 Anderson Road, Jamaica, New York 11434, and 87-69 171st Street, Jamaica Estates, New York 11432, the Respondent in this Matter. The Order to Show Cause sought to revoke DEA Certificate of Regisration AW5441287 and to deny an application executed by Respondent on March 25, 1984, for registration with DEA as a practitioner. The statutory predicates for the Order were two felony convictions of Respondent. On June 16, 1982, he was convicted in the Superior Court of New York, County of Nassau of one count of falsifying business records in the first degree. On October 24, 1983, Respondent was convicted in Arizona Superior Court, Pima County of one count of obtaining or attempting to obtain a narcotic drug by fraud or deceit.

Respondent, proceeding *pro se*, requested a hearing on the issues raised by the Order to Show Cause. The Matter was placed on the docket of Administative Law Judge Francis L. Young, who scheduled a hearing before him in Washington, D.C. on May 8, 1985. By telegrams dated May 6, 1985 and May 7, 1985, Respondent explicitly waived his opportunity for a hearing and requested that the decision in this Matter be made on the basis of the information in the possession of the Government and an affidavit of Respondent. On May 7, 1985, Judge Young terminated the proceedings before him in this Matter. Respondent submitted an affidavit which the Acting Administrator has considered in making his decision. The Acting Administrator finds that Respondent has waived his opportunity for a hearing. 21 CFR 1301.54 (e) and enters this final order on the record as it appears. 21 CfR 1301.57.

The Acting Administrator finds that in November, 1981, Respondent approached several physicians in the Tucson, Arizona area with a falsified set of medical records from the University of Texas System Cancer Center. These records described one "Calvin Castle" who met Respondent's physical description. Calvin Castle was described in the reports as suffering from inoperable cancer of the pancreas which had spread to the liver. He was described as being medicated with Dilaudid 4mg. as necessary for pain and having been given one month's supply of the drug. Before he was arrested, Respondent had obtained 3200 Dilaudid 4mg. tablets from unsuspecting physicians in this manner. At the time of his arrest, Respondent had in his possession a list he wrote of Tucson area physicians. Their addresses and telephone numbers. The Acting Administrator finds that Respondent was not suffering form pancreatic cancer in November, 1981. The Acting Administrator further finds that had Respondent continued his sham in the Tuscon area, the Dilaudid he diverted would have found its way into the illegitimate market. The Acting Administrator is not convinced that Respondent was engaged in this operation solely to obtain narcotics to feed his habit, as Respondent had stated in this prehearing statement. The quantities of Dilaudid are too large to support that concluson.

The Acting Administrator further finds that Respondent first came to the attention of DEA in New York in 1977 when an investigation of a pharmacy in Hollis, Borough of Queens, revealed that the pharmacy was ordering approximately 1,000 Dilaudid 4 mg. a month. The pharmacist told DEA investigators that Respondent wrote all of the Dilaudid 4 mg. prescriptions and Respondent would often appear at the pharmacy to pick up the drugs. When DEA investigators contacted a "patent in whose name a number of the prescriptions were written, she said that she had not seen Respondent in ten months and that she had not received any medication from the pharmacy.

The Acting Administrator also finds that on May 7, 1981, Respondent attempted to pass a prescription for 120 Dilaudid 4mg. at a pharmacy in Englewood, New Jersey. The prescription was for an "Edna Smith" and was written by a physician whose prescribing habits led to a substantial civil penalty against the physician. Respondent was arrested but the prescription was later suppressed and the criminal charge against him was dismissed. Investigation revealed that Respondent passed prescriptions written by this other physician at pharmacies in Fair Lawn, Glen Rock and Jersey City, New Jersey. Respondent used at least two names coupled with non-existent addresses in passing these prescriptions. Respondent told DEA investigators in August, 1982 that the other physician would write out the body of the prescription and sign it. Respondent filled in the name.

The Acting Administrator finds that prescriptions written by Respondent began appearing in pharmacies in Nassau County, New York in April, 1982. One prescription for 60 Doriden was in the name of "George Pappas", 15 Maple, Levittown, New York. There is no Maple Street, Avenue, Place, Lane, Boulevard, Road or Parkway in Levittown, New York. Further investigation revealed a number of prescriptions written by Respondent for Doriden and Empirin #4 at other Nassau County pharmacies. All of the prescriptions bore fictitious addresses. One address made up by Respondent would have been located in Long Island Sound. Doriden and a codeine-containing compound such as Empirin #4 comprise a heavily abused combination known as "Fours and Dors". This combination was beginning to be seen in Nassau County in the spring of 1982, just when Respondent was passing these prescriptions. Respondent told investigators that he was taking the Doriden and Empirin #4 to combat his alcoholism: The Empirin #4 was for pain and the Doriden helped him sleep. The Acting Administrator completely rejects this explanation. It strains belief that a physician would medicate himself with such a heavily abused combination as "Fours and Dors" when competent, professional treatment was avaiable.

The Acting Administrator has considered the affidavit submitted by Dr. Wright. The affidavit states, *inter alia*, that Respondent has been sober for four years. He points out that he is fully licensed by the State of New York. He also says, "Respondant (sic) continues in community service in a medically under-privilage (sic) of the State of New York."

At several points, Respondent also appears to contest the use of the prescriptions suppressed by the New Jersey court in these proceedings. The holding of the Supreme Court in *Ins* v. *Lopez-Mendoza*, 104 S. Ct. 3479 (1984), in which the Court permitted introduction of otherwise excludable evidence in a deportation hearing, permits the Acting Administrator to consider the prescriptions suppressed by the New Jersery court. The Supreme Court held in *United States* v. *Janis*, 428 U.S. 433, 96 S.Ct. 3021 (1976) that in deciding whether to extend the exclusionary rule to a proceeding the tribunal is to weigh the likely social benefits of excluding the evidence against its likely cost. The Acting Administrator concludes that a DEA administrative registration proceeding is much more like a deportation hearing than a criminal trial. Like a deportation hearing, the purpose of a DEA administrative proceeding is not to punish past transgressions. The purpose of a DEA proceeding is to determine whether a particular practitioner is capable of being responsibly registered with DEA to handle controlled substances.

The Acting Administrator is not convinced that Respondent is capable of meeting the responsibilities of DEA registration. While Respondent's sobriety is praiseworthy in light of his problems with drug and alcohol abuse, Respondent has not met his burden of demonstrating his ability to handle controlled substances in his medical practice.

Accordingly, pursuant to the authority vested in the Attorney General by 21 U.S.C. 824(a) and redelegated by 28 CFR Section 0.100, the Acting Administrator hereby revokes Certificate of Registration AW5441287, and denies the appplication executed on March 25, 1984, for reason that Harold Lloyd Wright, M.D. was convicted of felonies relating to controlled substances. The revocation and denial will be effective July 10, 1985.

Dated: June 4, 1985.

John C. Lawn,

Acting Administrator.

[FR Doc. 85-13890 Filed 6-7-85; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 8, 1985, Johnson Matthey Inc., Custom Pharmaceuticals Department, 2002 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Pethidine (meperidine) (9230)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than July 10, 1985.

Dated: June 4, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-13891 Filed 6-7-85; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 25, 1985, Stepan Chemical Company Natural Products, 100 West Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Ecogonine (9180)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than July 10, 1985.

Dated: June 4, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-13894 Filed 6-7-85; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Theater Advisory Panel; 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 Theater Advisory Panel (Overview Meeting) to the National Council on the Arts on June 27-28, 1985, from 9:00 a.m.-5:30 p.m. in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on June 28, from 9:00 a.m.-4:00 p.m. Topics for discussion will be the Five-Year Planning Document, the National Theater Project, Theater for Young Audiences Musical Theater, Categories Consolidation and FY 1986 Budget.

The remaining sessions of this meeting on June 27, from 9:00 a.m.-5:30 p.m. and on June 28, from 4:00 a.m.-5:30 p.m. are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

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.

Dated: June 3, 1985.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85-13889 Filed 6-7-85; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; 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 Visual Arts Advisory Panel (New Genres Section) to the National Council on the Arts will be held on June 24-28, 1985, from 9:00 a.m.—5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

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.

Dated: June 3, 1985.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85-13900 Filed 6-7-85; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-331]

Iowa Electric Light and Power Company, Central Iowa Power Cooperative, and Corn Belt Power Cooperative (Duane Arnold Energy Center); Exemption

I

Iowa Electric Light and Power Company, et al. (the licensee) is the holder of Facility Operating License No. DPR-49 which authorizes the operation of the Duane Arnold Energy Center at steady state reactor power levels not in excess of 1658 megawatts thermal. The facility consists of a boiling water reactor located at the licensee's site near Palo in Linn County, Iowa. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

Section 50.48 of 10 CFR Part 50 requires a licensee to complete, if necessary, the alternative shutdown capability at a nuclear power plant according to the schedule detailed in the rule. The schedule in the rule calls for installation to be complete before startup after the earliest of the following events commencing 180 days or more after NRC approval of the design of the alternative shutdown capability:

(1) The first refueling outage;

(2) A planned outage lasting 60 days or more; or

(3) An unplanned outage lasting 120 days or more.

By letter dated January 3, 1983, the NRC staff transmitted a Safety Evaluation to the licensee which concluded that alternative shutdown capability met the requirements of Sections III.G.3. of Appendix R to 10 CFR 50 in the areas of the control room complex, control buliding heating, ventilating and air conditioning (HVAC) room, and the HVAC heat exchanger and chiller area at the Duane Arnold Energy Center (DAEC) and approved the liecensee's conceptual design of the Alternate Shutdown Capability (ASC).

Currently, DAEC is in a refueling outage to make the modifications for the ASC approved in our January 3, 1983 Safety Evaluation. As a result of the evaluation of the fire protection modifications against the requirements of 10 CFR part 50 Appendix R, the licensee found that fire could cause control power fuses to blow at the motor control center prior to transferring control to the Alternate Sutdown System. This would require the fuses to be replaced prior to operating the associated shutdown equipment. However, replacement of fuses during a hot shutdown maintenance is prohibited by 10 CFR Part 50, Appendix R. Therefore, by a letter dated April 5, 1985, the licensee stated that, currently, the DAEC ASC provides automatic backup fusing for two transfer functions: Main Steam Isolation Valve Control and Safety/Relief Valve Manual Control. This design allows the DAEC to achieve hot shutdown for a short period of time without replacing any control power fuses which may be blown as a result of a Control Room fire. However, a source of makeup water to the Reactor Pressure Vessel is required within a few minutes to maintain hot shutdown and the current design does not provide automatic backup fuses for the water makeup systems.

At this time, ASC procedures are being written by the licensee to direct operators to replace control power fuses if an item of ASC equipment fails to function after control is transferred away from the control room. A complete supply of replacement fuses will be stored at the main ASC panel for ready access. However, the licensee intends to modify the ACS system so that the DAEC can achieve and maintain hot shutdown without replacing control power fuses. This effort will involve adding automatic backup fuses of five transfer circuits: the Division II Core

Spray pump and four motor-operated valves.

Because this problem was recently identified, the licensee has determined that it will not be possible to incorporate these modifications into the ASC during the current refueling outage which is scheduled to end in late May 1985. The design effort is considerable and requires the same engineers who are now dedicated to the installation of the present Alternate Shutdown Capability. The liensee has estimated that the procurement time for the transfer switches is approximately one year and that these modifications can be made most effectively during the Cycle 9 refueling outage.

The licensee has, therefore, requested an exemption from Section III.G.1 of Appendix R to allow the DAEC to operate for one fuel cycle (Cycle 8) with the currently designed ASC which may require the replacement of certain control power fuses to maintain hot shutdown as described above. The licensee states that it is highly unlikely that a control room fire would cause the failure of all fuses required to maintain hot shutdown. The licensee has committed to write procedures to replace blown fuses, if required, and to assure that replacement fuses will be immediately available to operators.

Based on the above, the staff has concluded that the licensee has provided acceptable interim post-fire shutdown capability to support the requested schedular exemption. Therefore, the staff has concluded that schedular exemption should be granted.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption requested by the licensee's letter of April 5, 1985, is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. The Commission hereby grants to the licensee an exemption from the requirements of 10 CFR 50.48(c)(4) to extend the deadline for completion of alternative shutdown capability at the Duane Arnold Energy Center until the startup of Cycle 9 (estimated March 1987).

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (50 FR 20862).

Dated at Bethesda, Maryland, this 30th day of May, 1985.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-13969 Filed 6-7-85; 8:45 am]

BILLING CODE 7590-01-M

Issuance and Availability Draft NUREG-1032, "Evaluation of Station Blackout Accidents at Nuclear Power Plants"

The U.S. Nuclear Regulatory Commission (NRC) staff has issued NUREG-1032, "Evaluation of Station Blackout Accidents at Nuclear Power Plants" in draft form. NUREG-1032 details the technical findings related to the proposed resolution of Unresolved Safety Issue A-44, "Station Blackout." This issue was identified as an Unresolved Safety Issue in the 1978 Annual Report, pursuant to section 210 of the Energy Reorganization Act of 1974.

Station Blackout is the complete loss of alternating current (ac) electrical power in a nuclear power plant. Because many safety systems required for reactor core decay heat removal and containment heat removal depend on ac power, the consequences of a station blackout could be severe. NUREG-1032 documents the findings of technical studies performed as part of the program to resolve this Unresolved Safety Issue.

Comments are being solicited from interested organizations, groups and individuals. The staff will evaluate the comments received, and address them, as appropriate, in the final reports.

Copies of the Draft NUREG-1032 will be available after June 14, 1985. Copies will be sent directly to utilities, utility industry groups and associations and environmental and public interest groups. Other copies will be available for review at the NRC Public Document Room, 1717 H Street, NW, Washington, D.C.; and the Commission's Local Public Document Rooms located in the vicinity of nuclear power plants. Addresses of these Local Public Document Rooms can be obtained from the Chief, Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 492-7536. Free single copies of the Draft NUREG-1032 are available as long as supplies last and may requested by writing to the Publication Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Comments should be forwarded in writing to Mr. Karl Kniel, Division of Safety Technology, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 by October 15, 1985. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received before this date.

Dated at Bethesda, Maryland, this 3rd day of June, 1985.

For the Nuclear Regulatory Commission.

Themis P. Speis,

Director, Division of Safety Technology, Office of Nuclear Reactor Regulation.

[FR Doc. 85-13967 Filed 6-7-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-528]

Palo Verde Nuclear Generating Station, Unit 1 Arizona Public Service Company, et al.; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission), has issued Facility Operating License No. NPF-41, (License) to Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority. This License authorizes operation of the Palo Verde Nuclear Generating Station, Unit 1 (facility) at reactor core power levels not in excess of 3800 megawatts thermal in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan. On December 31, 1984, the Commission issued Facility Operating License No. NPF-34, which authorized operation of Palo Verde Nuclear Generating Station, Unit 1 at power levels not in excess of 190 megawatts thermal. Facility Operating License No NPF-41 supersedes Facility Operating License No. NPF-34.

Palo Verde Nuclear Generating Station, Unit 1 is a pressurized water reactor which utilizes a CESSAR standard plant design and is located at the licensees' site in Maricopa County, Arizona approximately 36 miles west of the city of Phoenix.

The application for the license, as amended, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The issuance of this License has been authorized by the Atomic Safety and Licensing Board in its Initial Decision, dated December 30, 1982, and by the Commission at its meeting on May 30.

1985. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the Federal Register on July 11, 1980 (45 FR 46941) as clarified in a notice published July 25, 1980 (45 FR 49732).

The Commission has determined that the issuance of this License will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the License is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see: (1) Facility Operating License No. NPF-41, with Technical Specifications (NUREG-1133) and Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards dated December 15, 1981; (3) the Commission's Safety Evaluation Report of Palo Verde dated November 1981; Supplement Nos. 1 through 8, dated February 1982, May 1982, September 1982, March 1983, November 1983, October 1984, December 1984, and May 1985, respectively; (4) the Commission's related Safety Evaluation Report on CESSAR dated November 1981; Supplement No. 1 dated March 1983; Supplement No. 2 dated September 1983; (5) the Final Safety Analysis Reports and amendments thereto; (6) the Environmental Report and supplements thereto; (7) the Draft Environmental Statement dated October 1981; (8) the Final Environmental Statement dated March 1982; and (9) the Initial Decision issued by the Atomic Safety and Licensing Board dated December 30, 1982.

These documents are available for public inspection at the Commission's Public Document Room 1717 H Street, N.W., Washington, D.C., and the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004. A copy of Facility Operating License No. NPF-41 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and its Supplements 1 through 8 (NUREG-0857) and the Final Environmental Statement (NUREG-0841) may be purchased by calling (202) 275-2060 or (202) 275-2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C. 20013-7082. All orders should clearly identify the NRC publication number and the requester's GPO deposit account, or VISA or Mastercard number and expiration date. NUREG-0857 may also be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, the 1st day of June, 1985.

For the Nuclear Regulatory Commission.

Harry Rood,

Acting Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 85-13968 Filed 6-7-85; 8:45 am]

BILLING CODE 7590-01-M

Monthly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

Correction

In FR Doc. 85-12223 beginning on page 20969 in the issue of Tuesday, May 21, 1985, make the following corrections:

1. On page 20973, in the second column, under **Connecticut Yankee Atomic Power Company**, the date of amendment request should read "May 18, 1983".

2. On page 20990, in the entry for **Southern California Edison Company**, in the third column, in the first complete paragraph, in the twentieth line insert "of the Appendix B Technical Specifications reflects the current operations of the facility which is not significantly different from the current section 5.8." after "section 5.8".

BILLING CODE 1505-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14553; File No. 812-6063]

Application and Opportunity for Hearing; Great-West Life and Annuity Insurance Co., et al.

June 4, 1985.

Notice is hereby given that Great-West Life and Annuity Insurance Company (the "Company"), the Great-West Life Assurance Company ("Great-West"), and Pinnacle Series Account (the "Account"), at Solarium North Building, 7400 E. Orchard, Englewood, Colorado 80111, filed an application on February 21, 1985, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") exempting the Applicants from certain provisions of sections 9(a), 13(a), 15(a), 15(b), 26(a), and 27(c)(2) of the Act in connection with Applicants' offering of single premium variable life insurance policies. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of relevant provisions.

Applicants state that the Company, a wholly-owned subsidiary of Great-West, is a stock life insurance company organized under the laws of Kansas. Applicants state that the Account will be used to invest monies held under single premium variable life insurance policies, and that it is registering as a unit investment trust under the Act. Applicants state that the Account will invest solely in shares of the Maxim Series Fund (the "Fund"), a diversified, open-end management investment company. Applicants further state that other separate accounts established by the Company to receive and invest premiums under variable annuity contracts invest in the Fund, and in the future shares of the Fund may be sold to other separate accounts established by the Company or an affiliate.

Applicants assert that they are relying on Rule 6e-2 under the Act, and that paragraph (b)(15) of that Rule provides partial exemptions from the eligibility restrictions of section 9(a), and indirectly from section 13(a), 15(a), and 15(b) of the Act to the extent those provisions require "passthrough" voting. Applicants submit that paragraph (b)(15) limits its exemptive relief to a unit investment trust all the assets of which consist of shares of one or more registered management investment companies which offer their shares *exclusively* to variable life insurance separate accounts of the insurer or an affiliate. Because shares of the Fund are offered to variable annuity separate accounts and possibly will be offered to other separate accounts in the future, Applicants assert that this exclusivity requirement may not be satisfied. Accordingly, Applicants request an exemption from sections 9(a), 13(a), 15(a), and 15(b) to the extent necessary to permit Applicants to rely on the relief provided under paragraph (b)(15) even though shares of the Fund will be offered to other separate accounts. Applicants assert that this "mixed funding" will result in significant cost savings and will not compromise the regulatory purposes of the above-cited sections.

Applicants state that they consent to the following conditions to the order granting the exemption, which are summarized as follows: (1) The majority of the Fund's board of directors shall be disinterested, (2) the Fund's board of directors will monitor whether, from the standpoint of variable life insurance policyowners or variable annuity contractowners, mixed funding would create an irreconcilable material conflict, (3) the Company and Great-West shall monitor the Fund and shall promptly provide its board with information regarding any potential or existing irreconcilable material conflict, among other information, and (4) if it is determined by either the Fund's board, a majority of its disinterested directors, or by the Company that an irreconcilable material conflict has occurred, the Company, at its expense shall take whatever steps are necessary to eliminate the conflict, including segregating assets from the variable annuity contracts. Applicants further state that neither the Company nor the Fund shall be required to establish a new funding medium for any variable annuity contract if an offer to do so has been declined by vote of both a majority of the holders of all variable life insurance policies and a majority of the holders of all variable annuity contracts materially adversely affected by the irreconcilable material conflict or (2) to discontinue use of the Fund or any portfolio as the funding medium for any variable life insurance separate account.

Applicants further request an exemption from sections 26(a)(1), 26(a)(2) and 27(c)(2) of the Act to the extent necessary to permit Applicant to rely on paragraph (b)(13)(iii) of Rule 6e-2. Applicants submit that paragraph (b)(13)(iii) provides a conditional exemption from the custodian requirements under sections 26(a)(1), 26(a)(2) and 27(c)(2) of the Act if the life insurer complies with all other provisions of section 26 as if it were a trustee, depositor, or custodian for the separate account.

Applicants assert that the Company will comply with Section 26 of the Act and the conditions in paragraph (b)(13)(iii) except that the Account will hold shares of the Fund under an open account arrangement without the use of stock certificates and the Company will not be acting as trustee or custodian pursuant to a trust indenture. Applicants assert that the Commission has codified the relief requested in Rule 26(a)(2) for variable annuity contracts in the Rule 6e-3(T)(b)(13)(iii) for flexible premium variable life insurance policies, subject to conditions substantially identical to those in Rule 6e-2(b)(13)(iii), to which Applicants will be subject. Applicants further assert that it does not appear necessary for the Account's assets to be held pursuant to a trust indenture or similar instrument and that there is no need for a custodian with respect to Fund shares.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 26, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-13844 Filed 6-7-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22110; File No. SR-Amex-85-22]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change

The American Stock Exchange, Inc. (Amex), submitted on May 31, 1985, a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4[2] thereunder, which governs the use of automatic execution systems placed on the Amex's floor to permit market makers to facilitate the entry of orders for over-the-counter ("OTC") stocks underlying options admitted to trading on the Amex, in conjunction with their activities as options specialists or market-makers and for hedging purposes, but not for the purpose of making markets in such stocks.

Under the proposal, Amex will place computer-communication terminals operated by Institutional Networks Corporation ("Instinet")[3] at the specialists' posts and permit such terminals to be placed in member firm booths. The systems are intended, in part, to facilitate entry of orders for OTC stocks by specialists or market-makers hedging their options positions.

All Commission, exchange, and other self-regulatory organization rules prohibiting manipulative and other improper or unethical practices in the trading of securities, among other rules, will apply to the OTC transactions effected through the automatic execution system.[4] In addition, the Amex will make clear to its members that they will be prohibited from making a two-sided market in OTC stocks from the exchange floor through such systems. Amex will monitor the use of these systems to ensure, among other things, that two-sided markets in OTC stocks are not being made through the system.

In its filing, Amex states that the proposed rule change is consistent with Section 6 of the Act in that it will, among other things, facilitate the efficient execution of securities transactions, and protect the investing public. Accordingly the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

The Coimmission also finds good cause to approve this proposed rule change prior to the thirtieth day after publication of notice of the proposed rule change because, over thirty days ago, the Commission approved a substantially similar proposed rule change by the Chicago Board Options Exchange, Incorporated ("CBOE").[5] The Commission noticed the CBOE proposal for comment, but received none.[6]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

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[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b-4 (1984).

[3] Instinet is, among other things a vendor of transaction and quotation data and operates, as a broker-dealer, an automated execution system.

[4] Amex will issue an educational memorandum to members emphasizing, among other things, that the use of the systems are subject to all Amex and Commission rules applicable to the trading activity of broker-dealers.

[5] Approval of the CBOE proposal was published in Securities Exchange Act Release No. 21858 (March 18, 1985), 50 FR 11774 (March 25, 1985).

[6] Notice of the CBOE proposal was given in Securities Exchange Act Release No. 21711 (February 4, 1985), 50 FR 5832 (February 12, 1985).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 3, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-13843 Filed 6-7-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund 14 of its 39 Small Business Development Centers (SBDC's) for fiscal year 1986. It should be noted that fiscal year 1986 funding is contingent upon legislative reauthorization of the SBDC program. The SBDC's intended to be refunded are located in the following States: Alabama; Connecticut; Delaware; Iowa; Kansas; Kentucky; Louisiana; Massachusetts; Michigan; Mississippi; Missouri; North Carolina; Vermont; and West Virginia. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDC's to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through September 30, 1985.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application of presently existent Small Business Development Centers (SBDC's) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published four months in advance of the date of refunding of these existent SBDC's. Relevant information identifying these SBDC's and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to each affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. Copies of such written comments should also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 110 days from the date of publication of this notice. The relevant SBDC will make effort to accommodate these comments during the 110 day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDC's operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDC's must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives are agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas is provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform but not be limited to the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All counseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Dated: June 4, 1985.

James C. Sanders,

Administrator.

Dr. Fred Myrick, State Director, University of Alabama in Birmingham, School of Business, 1717 11th Avenue South, Suite 419, Birmingham, Alabama 35294, (205) 934–7260

Mr. John P. O'Connor, State Director, University of Connecticut, Box U–41, Room 422, 368 Fairfield Road, Storrs, Connecticut 06268, (203) 486–4135

Mr. David Perk, Acting State Director, University of Delaware, Suite 005-Purnell Hall, Newark, Delaware 19711, (302) 451–2747

Ms. Louise H. Brinkman, State Director, Iowa State University, Center for Industrial Research and Service (CIRAS), Room 205, Engineering Annex, Ames, Iowa 50011, (515) 294-3420

Ms. Susan K. Osborne-Howes, State Director, Wichita State University, College of Business Administration, 1845 Fairmount, Wichita, Kansas 67208, (316) 689–3193

Mr. Jerry Owen, State Director, University of Kentucky, 18 Porter Building, Lexington, Kentucky 40506-0205, (606) 257–1751

Mr. John Ciccarelli, State Director, University of Massachusetts, School of Management, Amherst, Massachusetts 01003, (413) 549–4930-Ext. 303

Dr. Norman Schlaffman, Acting State Director, Wayne State University, Metropolitan Center for High Technology, Detroit, Michigan 48201, (313) 577–4848

Dr. Robert D. Smith, State Director, University of Mississippi, School of Business Administration, 3825 Ridgewood Road, Jackson, Mississippi 39211, (601) 982–6760

Mr. Fred O. Hale, State Director, St. Louis University, 3642 Lindell Boulevard, St. Louis, Missouri 63108, (314) 534–7232

Mr. Scott R. Daugherty, Acting State Director, University of North Carolina, 820 Clay Street, Raleigh North Carolina 27605, (919) 733–4643

Mr. Norris Elliott, State Director, University of Vermont, Extension Service, Morrill Hall, Burlington, Vermont 05405, (802) 656–4479

Mr. John Baker, State Director, Northeast Louisiana University, Administration 2–123, Monroe, Louisiana 71209, (318) 342–2464

Mr. Cicil Underwood, State Director, University of Charleston, 2300 MacCorkle Avenue, S.E., Charleston, West Virginia 25304, (304) 357–4800

[FR Doc. 85–13834 Filed 6–7–85; 8:45 am]

BILLING CODE 8025–01–M

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to fund for the first time an additional Small Business Development Center (SBDC) in the Virgin Islands during fiscal year 1985. Currently, there are 39 SBDC's in existence. This notice also provides a description of the SBDC

program by setting forth a condensed version of the program announcement which has been furnished to the proposal developer for the SBDC to be funded. This publication is being made to provide the State single point of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed funding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through August 9, 1985.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application for funding of the proposed Small Business Development Center (SBDC). Also, published herewith is an annotated program announcement describing the SBDC program in detail.

The proposed SBDC will be funded at the earliest practicable date following the 60-day comment period. However, no funding will occur unless all comments have been considered. Relevant information identifying this SBDC and providing the mailing address of the proposal developer is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single point of contact and other interested State and local entities are expected to advise the relevant proposal developer of their comments regarding the proposed funding in writing as soon as possible. Copies of such written comments must also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW, Washington, D.C. 20416. Comments will be accepted by the relevant proposal developer and SBA for a period of two months (60 days) from the date of publication of this notice. The proposal developer will make every effort to accommodate these comments during the 60-day period. If the comments cannot be accommodated by the proposal developer, SBA will, prior to funding the proposed SBDC, either attain accommodation of any comments or furnish an explanation to the commenter of why accommodation cannot be attained prior to funding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under § 21 of the Small Business Act (15 USC 648). SBDC's operate pursuant to the provisions of § 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In States where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDC's must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agribusiness, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training in specialized areas other than basis small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas is provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform but not be limited to the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All counseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Address of Proposed SBDC and Proposal Developer

Dr. William H. DeLone, College of the Virgin Islands, Charlotte Amalie, St. Thomas, U.S. Virgin Islands, 00801 (809) 774–1252.

Dated: May 30, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85–13742 Filed 6–7–85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 01/01–0030]

Atlas Capital Corp.; License Surrender

Notice is hereby given that Atlas Capital Corporation, 55 Court Street, Boston, Massachusetts 02108, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Atlas Capital Corporation was licensed by the Small Business Administration on September 21, 1961.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was accepted on March 8, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: May 24, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–13838 Filed 6–7–85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 01/01–0018]

Massachusetts Capital Corp.; License Surrender

Notice is hereby given that Massachusetts Capital Corporation, 400 Washington Street, Braintree, Massachusetts 02184 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Massachusetts Capital Corporation was licensed by the Small Business Administration on June 21, 1961.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was accepted on May 21, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–13839 Filed 6–7–85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area 2193]

Ohio; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on June 3, 1985, I find that the Counties of Ashtabula, Columbiana, Licking and Trumbull constitute a disaster loan area because of damage from severe storms, high winds, and tornadoes beginning on May 31, 1985. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on August 2, 1985, and for economic injury until March 3, 1986,[1] at: Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., SW., Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.125

[1] This time period is subject to change in accordance with the requirements of the Federal budget.

The number assigned to this disaster is 219312 for physical damage and for economic injury the number is 639700.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: June 4, 1985.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-13840 Filed 6-7-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area 2192]

Pennsylvania; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on June 3, 1985, I find that the Counties of Beaver, Butler, Crawford, Erie, Forest, Lycoming, McKean, Mercer, Northumberland, Union, Venango, and Warren constitute a disaster loan area because of damage from severe storms, high winds, and tornadoes beginning on May 31, 1985. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on August 2, 1985, and for economic injury until March 3, 1986,[1] at: Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., SW., Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 219212 for physical damage and for economic injury the number is 630600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 3, 1985.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-13841 Filed 6-7-85; 8:45 am]

BILLING CODE 8025-01-M

[1] This time period is subject to change in accordance with the requirements of the Federal budget.

[Declaration of Disaster Loan Area No. 2191]

Puerto Rico; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on May 31, 1985, I find that the municipalities of Adjuntas, Anasco, Arecibo, Barceloneta, Jayuya, Mayaguez, Santa Isabel, Utuado, and Vega Baja within the Commonwealth of Puerto Rico constitute a disaster loan area because of damage from severe storms, landslides, mudslides, and flooding beginning on May 16, 1985. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on August 2, 1985, and for economic injury until February 28, 1986,[1] at: U.S. Small Business Administration, Federal Building, Room 691, Carlos Chardon Avenue, Hato Rey, Puerto Rico 00919, or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.000

The number assigned to this disaster is 219106 for physical damage and for economic injury the number is 630500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 31, 1985

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-13842 Filed 6-7-85; 8:45 am]

BILLING CODE 8025-01-M

Advisory Committee on Veterans Business Affairs; Public Meeting

The U.S. Small Business Administration, Advisory Committee on Veterans Business Affairs will hold a public meeting at 10:30 a.m., on Tuesday, June 25, 1985, at the U.S. Small Business Headquarters, 1441 L Street, NW., Room 1000 Administrator's Conference Room, Washington, D.C. 20416, 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 Leon J. Bechet, Director (Acting) Office of Veterans Affairs, U.S. Small Business Administration, 1441 L Street, NW., Room 500, Washington, D.C. 20416, (202) 653-8220.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 31, 1985.

[FR Doc. 85-13835 Filed 6-7-85; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Meeting; Cancellation

The U.S. Small Business Administration, Advisory Region VIII Advisory Council, located in the geographical area of Casper, Wyoming, public meeting, scheduled from 8:30 a.m. to 4:30 p.m., on Wednesday, June 12, 1985, at the Dunbar Inn, Highway 30 West, Evanston, Wyoming, is cancelled. Future date to be established.

For further information, write or call Paul W. Nemetz, District Director, U.S. Small Business Administration, 100 East B Street, Room 4001, Casper, Wyoming (307) 261-5761.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 31, 1985.

[FR Doc. 85-13836 Filed 6-7-85; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council Meeting; Cancellation

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of The Lower Rio Grande Valley of Texas, public meeting, scheduled at 1:00 p.m., Tuesday, June 4, 1985, U.S. Small Business Administration's Conference Room, 222 E. Van Buren, Suite 500, Harlingen, Texas, is cancelled.

For further information, write or call Rodney W. Martin, District Director, U.S. Small Business Administration, 222 E. Van Buren, Suite 500, Harlingen, Texas (512) 423-8933.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 31, 1985.

[FR Doc. 85-13837 Filed 6-7-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airway Science Demonstration Grants

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to solicit Airway Science Demonstration Grant Proposals.

SUMMARY: The Federal Administration (FAA) intends to solicit competitive proposals for Airway Science Demonstration Grants from accredited public or nonprofit private four-year institutions of higher learning committed to the establishment of an Airway Science curriculum. The solicitation is scheduled to be issued in September of this year with awards expected on or before January 1986.

Background

The solicitation noticed by this announcement represents a continuation of the FAA's Airway Science Demonstration Grant Program which funds projects at selected institutions of higher learning which have evidenced a commitment to the agency's Airway Science curriculum program. These grants are authorized by Pub. L. 98–473 (98 Stat. 1837).

The FAA's Airway Science curriculum is intended to develop a cadre of qualified college graduates well-suited to the occupations necessary to support the Nation's future airspace system. The FAA considers the recruitment/hiring of graduates of a four-year Airway Science curriculum vital to its management of a safe and efficient airspace and airway system.

The FAA's Airway Science curriculum, developed with the assistance of the Universtiy Aviation Association, is designed to meet normal university academic and accreditation requirements and allows educational institutions the option of offering any number of five areas of concentration according to their individual resources. The five areas of concentration are: (1) Airway Science Management, (2) Airway Computer Science, (3) Aircraft Systems Management, (4) Airway Electronic Systems, and (5) Aviation Maintenance Management. Graduates will be eligible for recruitment/hiring by the FAA in one of four agency career fields: Air traffic control, electronics technology, aviation safety inspection (general aviation operations and maintenance), and computer sciences.

Discussion

The FAA's Airway Science Demonstration Grant solication will provide for multiple grants in support of an Airway Science curriculum with at least one award to a small institution (to be defined based upon student enrollments) and another to a minority institution. See, 49 FR 22903 for a definition of a "minority" institution. The awards will range typically from a minimum of $100,000.00 to a maximum of $1,000,000.00 and will be based upon the likelihood that a given demonstration project proposal will achieve the objectives of the agency's Airway Science program. Proposed cost sharing formulas will be a consideration in the evaluation of all proposals. The agency does not intend to fund all proposed projects or necessarily any specific element of a proposal selected for funding. The agency expects to distribute most, if not all, of the $400,000.00 available. The monies may only be used for the construction, purchase or lease of buildings and associated facilities, instructional materials, or equipment to be used in conjunction with a college's or university's Airway Science curriculum. Monies are not available for salaries, operating expenses or for research and development. In no event will a grant award be made to an institution without an approved Airway Science curriculum.

References

Educational institutions interested in the FAA's previous Airway Science activities may refer to the following **Federal Register** notices: March 18, 1983 (48 FR 11672; FAA's proposed Airway Science Curriculum demonstration project plan), July 15, 1983 (48 FR 32490; Office of Personnel Management's (OPM) approval of FAA's demonstration project plan) and June 1, 1984 (49 FR 22903; FAA's announcement of the first Airway Science Demonstration Project Grant). [The June 1, 1984, notice contains the evaluation criteria initially employed by the agency in selecting its first demonstration grant recipient (a minority institution). Potential applicants are hereby advised that the grants contemplated by the present announcement (for both majority and minority institutions) will employ comparable but not necessarily identical evaluation criteria.]

FOR FURTHER INFORMATION CONTACT: Virginia Hancock, Airway Science Grant Coordinator, or Donald Higgins, Airway Science Curriculum Coordinator, after June 30, 1985, on (202) 426–8678; or write to either at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Attn: APT–200.

Issued in Washington, D.C. on June 3, 1985.

E.V. Curran,

Director of Personnel and Technical Training.

[FR Doc. 85–13815 Filed 6–7–85; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held June 12, 1985, from 10:00 a.m.–12:00 noon in Room 600 and from 1:30 p.m. to 3:30 p.m. in Room 800, 301 4th Street, SW., Washington, D.C.

From 10:00 a.m.–11:00 a.m. the Commission will conduct an overseas telephone conference on USIA's television programs with Public Affairs Officers Terrence Catherman (Paris), Robert Korengold (London) and Christopher Snow (Brussels). From 11:00 a.m.–12 noon the Commission will discuss International Visitors program with Mr. Charles H. Ainsworth, President, Board of Directors, National Council for International Visitors (NCIV), Ms. Susan C. Wilkes, NCIV Board Member and Chairman of the NCIV Data Management Committee, and Ms. Diane G. Cook, immediate Past President, NCIV Board of Directors. From 1:30 p.m.–2:30 p.m. the Commission will meet with Mr. Alvin Snyder, Director, Television and Film Service, to discuss USIA's television programs. From 2:30–3:30 the Commission will meet with USIA Director Charles Z. Wick.

Please call Gloria Kalamets, (202) 485–2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: June 4, 1985.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 85–13896 Filed 6–7–85; 8:45 am]

BILLING CODE 8230–01–M

VETERANS ADMINISTRATION

Advisory Committee on Readjustment Problems of Vietnam Veterans; Rescheduled Meeting

The meeting of the Advisory Committee on Readjustment Problems of Vietnam Veterans originally scheduled for June 13 and 14, 1985 (50 FR 20645, May 17, 1985) has been rescheduled for July 11 and 12, 1985. The sessions will be held in the Omar Bradley Conference

Room, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC. All sessions will be open to the public and will be held from 9 a.m. to 4 p.m.

Dated: June 4, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85-13878 Filed 6-7-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 111
Monday, June 10, 1985

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).

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1

CIVIL RIGHTS COMMISSION

PLACE: Fifth Floor Conference Room, 1121 Vermont Avenue, NW., Washington, D.C.

DATE AND TIME: Wednesday, June 12, 1985, 9:00 a.m.–11:30 a.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Staff Director's Report
  A. Status of Funds
  B. Personnel Report
  C. Office Directors' Reports
IV. Possible Publication of Commission Debate on Comparable Worth
V. Civil Rights Developments in the Mid-Atlantic Region

FOR FURTHER INFORMATION PLEASE CONTACT: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Lawrence B. Glick,
Solicitor.
June 5, 1985.

[FR Doc. 85–13994 Filed 6–6–85; 11:17 am]
BILLING CODE 6335-01-M

2

DEPARTMENT OF EDUCATION

AGENCY: National Council on Educational Research.

ACTION: Full Council Meeting of the National Council on Educational Research.

MATTERS TO BE DISCUSSED: Receive committee reports; Report from the Acting Director of the National Institute of Education (reorganization discussion, lab and center discussion). (Discussion of possible resolutions) Closed session—Internal Personnel Matters.

DATE: Monday, July 1, 1985.

ADDRESS: National Institute of Education, 1200 19th St., NW., Washington, D.C. (Room 823).

STATUS:

9:00 a.m.–10:00 a.m.—Closed
10:00 a.m.–12:00 p.m.—Open
12:00 p.m.–1:30 p.m.—Lunch
1:30 p.m.–5:00 p.m.—Open

TIME: 9:00 a.m.–5:00 p.m.

FOR FURTHER INFORMATION CONTACT: D. Renee Trent, National Council on Educational Research, 2000 L St., NW., Suite 617B Washington, D.C. 20036, 202–254–7490.

SUPPLEMENTARY INFORMATION: The National Council on Educational Research is established under section 405 of the General Provisions Act. The N.C.E.R. meeting will be closed to the public from 9:00 a.m. to 10:00 a.m. to discuss internal personnel matters. The meeting will be closed under the provisions of 34 CFR 705.2(a) (2) and (6) and 5 U.S.C., 552b(c) (2) and (6).

Records are kept of all Council proceedings and are available for public inspection at the office of the National Council on Educational Research at 2000 L St., NW., Suite 617B, Washington, D.C. 20036 between the hours of 8:30 a.m. to 5:00 p.m.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title, 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Dated: June 6, 1985.

D. Renee Trent,
Authorizing Official, National Council on Educational Research.

[FR Doc. 85–14017 Filed 6–6–85; 3:17 pm]
BILLING CODE 4000-01-M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 5, 1985.

TIME AND DATE: 10:00 a.m., Wednesday, June 12, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor, MSHA v. Kennecott Mineral Co., Utah Copper Division, Docket Nos. WEST 82–155–M, WEST 83–60–M. (Issues include whether 30 CFR 9.22, the berm standard applicable to metal and non-metal open pit mines, is valid.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5632.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 85–13999 Filed 6–6–85; 11:46 am]
BILLING CODE 6735-01-M

federal register

Monday
June 10, 1985

Part II

Environmental Protection Agency

40 CFR Part 271

State Hazardous Waste Programs; Procedures for Approving Revisions; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SWH-FRL-2828-4]

State Hazardous Waste Programs; Procedures for Approving Revisions

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to amend the procedures in 40 CFR 271.21 for processing revisions to State hazardous waste programs. This amendment is designed to streamline and improve the revision process for the States by eliminating the distinction between substantial and non-substantial revisions and making other changes to the approval procedures. The new process will offer increased public participation by providing an opportunity to comment on all, rather than only substantial, program revisions.

DATES: Comments must be submitted on or before July 10, 1985.

ADDRESSES: Comments on these proposed amendments should be addressed to the Docket Clerk (Docket 3006—Streamlining State Revisions), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The public docket for this rulemaking is available at Room S-212, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA hotline, toll-free at (800) 424-9346 or in Washington, D.C. at (202) 382-3000, or Frank McAlister, State Programs Branch, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Telephone: (202) 382-2210.

SUPPLEMENTARY INFORMATION:

I. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926, have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. However, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allow States to revise their programs to become substantially equivalent instead of equivalent to the Federal HSWA program. For both the RCRA and HSWA programs, States with final authorization must revise their hazardous waste programs when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260-266 and 270-271.

40 CFR 271.21(b) requires States to submit their proposed program revisions to EPA for approval. The rule also specifies two types of EPA approval procedures for program revisions. For substantial program revisions, EPA must issue a public notice in the **Federal Register**, in the major newspapers in the State, and via mail to interested persons. The notice must summarize the proposed revisions, provide for a comment period of at least 30 days, and provide for an opportunity for a public hearing if there is significant public interest. After the comment period and a determination by the Agency that the proposed revisions are in compliance with the requirements of the Act, a notice of approval is published in the **Federal Register**.

As provided by the current 40 CFR 271.21(b), the same procedures do not apply to non-substantial program revisions. Rather, notice of approval of non-substantial program revisions currently may be given simply by a letter from the Administrator to the State, Governor, or his designee.

II. Reason and Basis for Today's Amendment

In light of the magnitude of anticipated changes in State hazardous waste programs necessitated by the new statutory and regulatory requirements stemming from HSWA and other changes EPA will be making to the RCRA programs, we foresee reviewing numerous program revisions for the indefinite future. Further, we anticipate that the HSWA program changes and many non-HSWA changes would likely be considered substantial. We are concerned, therefore, that current procedures for processing substantial program revisions may be too time-consuming and resource-intensive for both the States and EPA. The time element is particularly critical: until a State receives authorization to implement a permitting requirement imposed by HSWA, the State cannot issue a RCRA permit to a facility within its borders. Instead, it must issue a joint permit with EPA whereby EPA adds the HSWA requirements that the State is not authorized to implement.

Our experience in the State authorization process has shown that few public comments tend to be received, and those comments usually are supportive of the State's authorization. Generally we believe little public interest has been shown in most EPA decisions granting final authorization to State programs because the State has already provided for public comments when it developed its regulations. The Federal authorization decision seems to attract less public interest since it primarily involves a comparison of the State program against Federal requirements.

Given the experience described above and our desire to expedite the State revision process, we decided to examine alternative rulemaking procedures. At the same time we decided it would be preferable to increase the opportunity for public comment by allowing the public to participate in decisions on non-substantial program revisions. We concluded that the current procedures for approval of State hazardous waste program revisions can be streamlined while not compromising the opportunity for the public to comment. To increase the opportunity for public involvement in all State program revisions while decreasing the time and resources necessary to process revision applications, we are proposing to eliminate the distinction between substantial and non-substantial program revisions and to substitute two alternative procedures.

One alternative would be to use standard rulemaking procedures. A proposed approval or disapproval would be published in the **Federal Register** with at least a 30-day period for public comment. EPA would review the public comments and then publish a final decision approving or disapproving the proposed revision; this final rule would also contain a response to public comments.

In the second alternative, EPA would publish an "immediate final" rule in the **Federal Register**, indicating that the State revision is approved or disapproved and takes effect 45 days after the date of publication unless EPA receives a negative comment within the 30-day public comment period. Were EPA to receive a negative comment pertaining to the State revision discussed in the notice, the Regional Administrator would notify the State that such comment had been received and that the State's authorization will not take effect on the date identified in the published rule. In addition, before

the effective date of the immediate final rule, a new **Federal Register** action would be published, withdrawing the immediate final approval, identifying the objection and proposing the approval or disapproval of the revision with a public comment period. Then the standard rulemaking procedures identified in the first alternative above would be followed until a final decision is reached.

EPA believes that the States will find this new approach beneficial: Many program revisions will be expedited by the use of the immediate final rule approach, thereby reducing the time during which EPA and State responsibilities for program implementation would overlap. Also, today's proposal increases the opportunity for public participation by expanding it to include all Agency authorization actions.

The immediate final procedure has been used successfully for the approval of revisions of State Implementation Plans (SIPs) under the Clean Air Act, and we believe it will work as well for revisions to State RCRA programs. Unlike current procedures, the public will be informed of EPA's approval or disapproval of every State program revision in the **Federal Register** and will have an opportunity to comment. In most cases EPA does not expect to need to publish more than one **Federal Register** notice since experience has shown that few adverse public comments have been received. However, if EPA anticipates public interest or controversy in the approval or disapproval decision or adverse comments are received, the standard rulemaking procedure alternative would be used instead of the immediate final approach.

The proposed new procedures do not provide for public hearings to be held in conjunction with EPA's authorization decisions. Since there is no legal requirement to provide for hearings on revision decisions and little public interest has been shown to date in attending hearings, we think the opportunity to provide written comments is adequate. However, while the regulatory requirement is deleted, a Regional Administrator, in his discretion, could decide to hold one.

III. Regulatory Impact

Under Executive Order 12291 (46 FR 12193, February 19, 1981), EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not result in an annual effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. There will be no adverse impact on the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The regulation merely streamlines procedures for approving State RCRA program revisions. The Office of Management and Budget has exempted this proposed rulemaking from Executive Order 12291.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a regulation will have a significant impact on a substantial number of small entities so as to require a regulatory flexibility analysis. No regulatory flexibility analysis is required where the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The amendments proposed here merely streamline the procedures for approving State hazardous waste program revisions and do not affect the compliance burdens of the regulated community. Therefore, pursuant to 5 U.S.C. 601(b), I certify that this regulation, if issued in final form, will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must estimate the paperwork burden created by any information collection request contained in a proposed or final rule. Because there are no information collection activities created by this rulemaking, the requirements of the Paperwork Reduction Act do not apply.

Information collection requirements contained elsewhere in 40 CFR Part 271 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act and have been assigned OMB control number 2050-0041.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, and Confidential business information.

Dated: May 31, 1985

Lee M. Thomas,

Administrator.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

For the reasons set out in the preamble, 40 CFR Part 271 is proposed to be amended as follows:

1. The authority for Part 271 continues to read as follows:

Authority: Sections 1006, 2002(a), and 3006, Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

2. In § 271.21, paragraphs (b) (2) through (4) are proposed to be revised to read as follows:

§ 271.21 [Amended]

* * * * *

(b) * * *

(2) The Administrator shall approve or disapprove program revisions based on the requirements of this part and of the Act. In approving or disapproving program revisions, the Administrator shall follow the procedures of paragraph (3) or (4) below.

(3) The procedures for an immediate final publication of the Administrator's decision are as follows:

(i) The Administrator shall issue public notice of this approval or disapproval of a State program revision:

(A) In the **Federal Register** as an immediate final rule;

(B) In enough of the largest newspapers in the State to attract Statewide attention; and

(C) By mailing to persons on the State agency mailing list and to any other persons whom the agency has reason to believe are interested.

(ii) A State program revision shall become effective 45 days after the date of publication in the **Federal Register** in accordance with paragraph (b)(3)(i) of this section, unless an adverse comment pertaining to the State revision discussed in the notice is received within 30 days after the date of publication. If an adverse comment is received, the Administrator shall so notify the State and the immediate final rule shall be withrawn and a proposed approval or denial of the revision shall be initiated in accordance with the procedures in paragraph (b)(4) of this section.

(4) The procedures for proposed and final publication of the Administrator's decision are as follows:

(i) The Administrator shall issue public notice of his proposed approval or disapproval of a State program revision:

(A) In the **Federal Register** as a proposed rule;

(B) In enough of the largest newspapers in the State to attract Statewide attention; and

(C) By mailing to persons on the State agency mailing list and to any other persons whom the agency has reason to believe are interested.

(ii) The public notice shall summarize the State program revision and provide for an opportunity to comment for a period of at least 30 days.

(iii) A State program revision shall become effective when the Administrator's final approval is published in the **Federal Register**.

FR Doc. 85–13745 Filed 6–7–85; 8:45 am]

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federal register

Monday
June 10, 1985

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405 and 412

Medicare Program; Changes to the Inpatient Prospective Payment System and Fiscal Year 1986 Rates; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 412

[BERC-315-P]

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1986 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to modify the Medicare inpatient hospital prospective payment system in order to implement necessary changes arising from experience with the system and from certain recommendations of the Prospective Payment Assessment Commission provided under section 1886(d)(4)(D) of the Social Security Act (the Act). In addition, this proposal sets forth our first adjustment of the diagnosis-related group weights and classifications as required under section 1886(d)(4)(C) of the Act.

In addition, in the addendum to this proposed rule, we are proposing changes in the methods, amounts, and factors necessary to determine prospective payment rates for Medicare inpatient hospital services. Changes proposed to the Federal portion of the payment would be applicable to discharges occurring on or after October 1, 1985. Proposed changes to the hospital specific portion would be effective with hospital cost reporting periods beginning on or after October 1, 1985. In effect, these changes would apply to the final year of the three-year transition period for the hospital prospective payment system. The addendum also sets forth our proposal for determining the rate-of-increase limits (target amounts) for hospitals excluded from the prospective payment system.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by July 10, 1985.

ADDRESS: Address comments in writing to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-315-P, P.O. Box 26676, Baltimore, Maryland 21207

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C.; or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-315-P. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's office at 200 Independence Ave., SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT:

Linda Magno (301) 594-9343—DRG Recalibration, Hospital Wage Index, New Hospital Exemption from Rate of Increase, Payment for Cost Outliers, Referral Centers, Indirect Medical Education, Transfer Policy, Prospective Payment Rates, Excluded Hospitals

Thomas Hoyer (301) 594-9446—DRG Reclassification, GROUPER Program, Alcohol/Drug Hospitals and Units, Review Activities

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary of the Implementation of the 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 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 currently 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 Federal rate per discharge. The Federal rate is based in regional average standardized hospital costs in the first year, and a blend of a regional and national Federal rates per discharge in the second and third years. Beginning with the fourth year (that is, October 1, 1986), and continuing thereafter, the Federal portion of the payment for inpatient hospital services will be based entirely on national 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. Technical corrections for that were issued on October 19, 1983 (48 FR 48467). In that rule, we established criteria for determining—

- Which hospitals are included in or 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. Technical corrections for that rule were issued on June 1, 1984 (49 FR 23010).

As a result of our first year of experience with the prospective payment system and to accommodate changes resulting from the enactment of the Deficit Reduction Act of 1984 (Pub. L. 98-369) on July 18, 1984, we published a final rule on August 31, 1984 (49 FR 34728) that further revised the prospective payment regulations. In addition, in the addendum to that final rule, we made changes in the methods, amounts, and factors necessary to implement the second year of the payment transition period. Changes in the Federal rates were applicable to discharges occurring on or after October 1, 1984, while changes regarding the hospital specific portion of the payment were effective with hospital cost reporting periods beginning on or after October 1, 1984. Technical corrections on that final rule were issued on October 15, 1984 (49 FR 40167).

On March 29, 1985, we published a final rule (50 FR 12740) that redesignated the prospective payment regulations under a new 42 CFR Part 412. These regulations were previously located in 42 CFR 405.470 through 405.477.

B. Major Contents of This Proposed Rule

As stated above, this proposed rule would be effective for the third year of operation of the prospective payment system. For the first time, we are proposing to use updated data as the basis for classifying and weighting discharges and are considering the use

of new wage data. The proposed rule would incorporate, in both instances, more current data to replace 1981 data.

As part of our analysis of the most appropriate ways to accomplish the updating, we have been examining approaches that would permit updating the DRG weights or the wage index or both to reflect new data and methodological modifications while minimizing fluctuations in payments to particular hospitals. Examples of the type of approaches we have envisioned include retaining the use of 1981 data for certain factors, phasing in new factors over a two or three year period, combining or blending several data sources, or shifting to a moving average that would reflect the past several years of adjustment factors.

As discussed below and in sections II and III of this preamble, the more current data used in this proposed rule have somewhat different methodological and empirical bases than the DRG weighting factors and the wage index used in the first two years of the prospective payment system. The combination of newer data and modified methodology can be expected to produce somewhat more pronounced increases and decreases in Medicare payments for particular discharges in particular hospitals. As an alternative, updating the data without changing the underlying methodology (for example, shifting from the 1981 Bureau of Labor Statistics (BLS) wage index used in the first two years of the prospective payment system to the 1983 BLS wage index) would, on average, produce somewhat smaller reallocations than the survey-based wage index discussed below. We specifically solicit comments on the merits of these changes and on alternatives consistent with our other policy objectives and concerns.

1. *Changes to the DRG Classifications and Weighting Factors.* As required by section 1886(d)(4)(C) of the Act, we must adjust the classifications and weighting factors for discharges beginning with Federal fiscal year (FY) 1986. Our proposed changes are set forth in section II of this preamble.

2. *New Wage Index.* We are considering the use of a new wage index for purposes of adjusting for variations in area wage levels. This new wage index would be used both in standardizing hospital costs for purposes of determining the Federal rate and the DRG weights and for adjusting the Federal rate for purposes of determining prospective payments for hospitals. The new wage index is discussed in section III of this preamble.

3. *Regulations Changes.* In section IV of this preamble, we discuss several current provisions of the regulations in 42 CFR Parts 405 and 412, not discussed elsewhere in this rule, and set forth certain proposed changes concerning—

- Exemptions for new hospitals from the rate-of-increase limits;
- Payments for indirect costs of medical education;
- Limitations on charges to beneficiaries for hospitals paid under State cost control systems or demonstration projects;
- Payment for cost outliers; and
- Referral center adjustments.

We are also proposing several conforming changes to the regulations.

4. *Determining Prospective Payment Rates and Rate-of-Increase Limits.* In the addendum to this proposed rule, we set forth proposed changes to methods, amounts and factors for determining the FY 1986 prospective payment rates. We also are the proposing new target rate percentages for determining the rate-of-increase limits for FY 1986 for hospitals excluded from the prospective payment system.

5. *Impact Analysis.* In Appendix A, we set forth an analysis of the impact that the proposed changes described in this rule would have on affected entities.

6. *Discussion of Prospective Payment Assessment Commission Recommendations.* In section 1886(e)(2) of the Act, enacted by section 601(e) of Pub. L. 98-21, Congress provided for the establishment of the Prospective Payment Assessment Commission (ProPAC). ProPAC is directed by section 1886(d)(4)(D) of the Act to make recommendations to the Secretary with respect to adjustments to the DRG classification and weighting factors and to report to Congress with respect to its evaluation of any adjustments made by the Secretary.

ProPAC is also directed, by the provisions of section 1886 (e)(2) and (e)(3) of the Act, to make recommendations to the Secretary on the appropriate percentage change factor to be used in updating the average standardized amounts beginning with Federal fiscal year (FY) 1986. These recommendations are due to the Secretary no later than the April 1 before the beginning of each fiscal year. The statute requires that ProPAC, in making its recommendations, take into account changes in the hospital market basket, hospital productivity, technological and scientific advances, the quality of health care provided in hospitals, and long-term cost effectiveness in the provision of inpatient hospital services.

Under section 1886(e)(5) of the Act, we are required to publish the report of the recommendations from ProPAC as a part of this proposed rule. Therefore, we are reprinting the ProPAC report as Appendix C of this document. The recommendations, and the actions we are proposing to take with regard to them (when an action is recommended), are discussed in detail in the appropriate sections of this preamble and in the addendum to this proposed rule. Those recommendations that are not specifically relevant to matters presented below are discussed in section V of this preamble. For the benefit of the reader and in order to provide some perspective on the overall nature of the ProPAC recommendations, we briefly summarize them here and indicate generally where they are discussed.

- *Update Factors:*

—Recommendation 1: Amount of the Update Factor. For FY 1986 the standardized amounts should be updated by the projected increase in the hospital market basket, minus a combined adjustment of one percentage point for productivity and scientific and technological advancement goals, plus an allowance for the estimated increase in real case-mix complexity during FY 1985. (Addendum, section II.A.)

- *Hospital Market Basket:*

—Recommendation 2: The Number of Market Baskets. For FY 1986, a single market basket should be continued for those hospitals subject to the prospective payment system. ProPAC plans to study the use of multiple market baskets by region and classes of hospitals within regions. (Preamble, section V.A.)

—Recommendation 3: Market Basket for Psychiatric, Rehabilitation, and Long-Term Care Hospitals. Separate market basket weights should be used for psychiatric, rehabilitation, and long-term care hospitals and related distinct-part units, which are excluded from the prospective payment system but subject to the rate of increase limits. Separate market basket weights need not be developed for children's hospitals. (Addendum, section III.C.)

—Recommendation 4: Market Basket Wage Component—Occupational Groups. The wage component of the market basket should be split into the following three categories, each with separate weights: managers and administrators, professionals and technicians, and other hospital workers. (Preamble, section V.A.)

—Recommendation 5: Employment Cost Index Feasibility Study. The Secretary should work with BLS to study the advantages and feasibility of developing an employment cost index

for the hospital industry that includes both public and private hospitals and covers increases in both wages and fringe benefits. (Preamble, section V.A.)

—Recommendation 6: Study Effects of Changes in the Minimum Wage Law on Hospital Workers. ProPAC plans to study the extent to which hospital workers would be affected by changes in the Federal minimum wage law. (Preamble, section V.A.)

—Recommendation 7: Correction of Market Basket Forecast Errors. The update factor should include a correction for substantial errors (that is, those errors that equal at least 0.25 of one percentage point) made in the previous year's forecast of changes in the external price measures used in the hospital market basket. (Addendum, section II.A.)

—Recommendation 8: Statutory Change for Forecast Error Correction. The Secretary should seek a statutory change that would provide that, beginning with fiscal year 1986, the update factor include a correction for market basket forecast errors. (Addendum, section II.A.)

—Recommendation 9: Rebasing of Market Basket Weights. Market basket weights should be rebased at least every five years in order to reflect the most current mix of inputs used by hospitals, and more frequently if significant changes in the weights occur. The market basket weights will also need to be rebased if payment for capital-related or direct medical education costs are included in the prospective payment rates. (Preamble, section V.A.)

• *Discretionary Adjustment Factors:*

—Recommendation 10: Allowance for Productivity and Scientific and Technological Advancement Goals. For the fiscal year 1986 prospective payment rates, the allowance for productivity and scientific and technological advancement goals included in the discretionary adjustment factor should be set at minus one percentage point. (Addendum, section II.A.)

—Recommendation 11: Adjustment for Case-Mix Change. Real changes in case mix should be reflected in the prospective payments to individual hospitals and in the aggregate. Changes in reported case mix that are unrelated to actual differences in the types of patients treated should not be a source of change. (Addendum, section II.A.)

—Recommendation 12: Update Factor for Exempt Hospitals. In addition to the projected increase in the market basket, hospitals and hospital distinct part units excluded from the prospective payment system should receive an adjustment of minus one percentage point in their fiscal year 1986 update factor for productivity improvement and technological and scientific advancement (Addendum, section III.C.)

• *Hospital Labor Market Areas—Area Wage Index:*

—Recommendation 13: Improvement of Labor Market Area Definitions. In order to better reflect hospital labor markets, the Secretary should, as soon as possible, revise the current definition of a hospital labor market area used to adjust the prospective payment rates for area wage differences to take into account variations in wages paid in the inner city compared to suburban areas within a metropolitan area, and variations paid in different rural locations within a state. (Preamble, section V.B.)

• *Disproportionate Share Hospitals:*

—Recommendation 14: Disproportionate Share Adjustment for FY 1986. The Secretary should develop a methodology for adjusting the prospective payment rates for hospitals that have a disproportionate share of low income and Medicare patients and implement the adjustment in FY 1986. The adjustment should be implemented so that it does not change aggregate payments. (Preamble, section V.C.)

—Recommendation 15: Definition of Disproportionate Share Hospitals. The Secretary should complete the development of a definition of a "disproportionate share hospital" in ample time to include adjustments for these hospitals in the FY 1986 prospective payment rates. The Secretary should consider broader definitions of low income than simply the percent of patients who are Medicaid recipients and should determine whether the share of Medicare Part A patients should be excluded from the definition. (Preamble, section V.C.)

• *Standardized Amounts:*

—Recommendation 16: Rebasing the Standardized Amounts. The standardized amounts used to determine hospital payments under the prospective payment system should be recalculated using cost data that reflect hospital behavior under that system. The results of this recalculation, with appropriate modifications, could be used to rebase the standardized amounts. Although recent cost data are not available to recalculate the standardized amounts for FY 1986, the Secretary should implement a process for timely collection of the cost data necessary for future recalculation. (Addendum, section II.A.)

• *DRG Classifications and Relative Weighting Factors:*

—Recommendation 17: Recalibrating the DRG Weights. For FY 1986, all DRG weights should be recalibrated using the 1984 Part A tape bills (PATBILL) data set. The newly recalibrated weights should be: (1) Normalized so that the average case weight is the same as it was at the beginning of FY 1985, thereby incorporating DRG weight adjustments made prior to the start of FY 1985; and (2) adjusted for any demonstrable changes in reported case mix occurring during FY 1985. (Preamble, section II.C.)

—Recommendation 18: Cardiac Pacemaker Implantation. The DRGs involving cardiac pacemakers, DRGs 115 through 118, should be recalibrated in the same manner as other DRGs to reflect changes in practice since 1981. ProPAC plans to continue studying this issue. (Preamble, section II.B.)

—Recommendation 19: Cataract Extraction and Intraocular Lens Implantation. DRG 39 (Lens Procedures) should be recalibrated in the same manner as other DRGs to reflect changes in practice since 1981, including the more frequent implantation of an intraocular lens following cataract removal. ProPAC will continue to monitor this issue. (Preamble, section II.B.)

—Recommendation 20: Percutaneous Transluminal Coronary Angioplasty. Cases in which percutaneous transluminal coronary angioplasty is the principal procedure should be removed from DRG 108 and temporarily assigned to DRG 112 prior to recalibration. The Secretary should immediately implement a mechanism to identify bills for cases in which this procedure is performed in order to provide data for analysis and additional adjustment as appropriate. (Preamble, section II.D.)

—Recommendation 21: No change Recommended for Bone Marrow Transplantation and Infective Endocarditis. ProPAC has examined bone marrow transplantation (DRGs 394 and 403) and treatment for infective endocarditis (DRG 126) and is recommending no changes in DRG classifications or weights at this time, other than those that would occur with recalibration. ProPAC will continue to gather data on this subject. (Preamble, section II.B.)

II. Proposed Changes to DRG Classifications and Weighting Factors

Under the prospective payment system, we pay for inpatient hospital services on the basis of a rate per discharge that varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case (comprised of a hospital-specific portion

and an urban or rural Federal portion adjusted for area wages) and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the national average resources per case for the average hospital. Thus, cases in a DRG with a weight of 2.0 would, on average, require twice as many resources as the average case for the average hospital.

Congress recognized that it would be necessary to recalculate periodically the DRG relative weights to account for changes in resource consumption. In addition, Congress provided the Secretary with authority to reclassify services and procedures within the DRG system to take into account changes in medical technology and treatment patterns. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and weighting factors effective for discharges occurring in FY 1986 and at least every four fiscal years thereafter. These adjustments are made to reflect changes in resource consumption, treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The intention of Congress was that we would make changes as often as needed to achieve the objectives of the prospective payment system, including the need to keep current with developments in the areas of coverage and medical technology.

Below we set forth DRG reclassification and recalibration changes for discharges occurring on or after October 1, 1985. As discussed in section I.B. of this preamble, we solicit comments on the changes summarized below.

A. Basic Classification System

1. *General Background.* The method of classifying cases into DRGs for payment under the prospective payment system involves a number of steps. First, the physician indicates the principal diagnosis, as many as four additional diagnoses, and as many as three surgical procedures performed during the stay. This information is expressed by the hospital in the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD-9-CM) codes and is reported to the hospital's fiscal intermediary on the hospital bill. Age, sex, and discharge status are also considered in assigning a case to a DRG.

The intermediary then enters the information in its claims system and subjects it to a series of automated screens called the Medicare Code Editor. These screens are designed to identify cases that require further review before classification into a DRG can be accomplished. During this process, cases such as the following are selected for further development:

- Cases that are obviously improperly coded (for example, diagnoses that are inappropriate to the sex of the patient).
- Cases that includes surgical procedures not covered under Medicare (for example, bilateral carotid body resection or cosmetic surgery).
- Cases that require more information (for example, all open biopsies are identified so that the intermediary can determine through development whether the case actually involved an open biopsy (a surgical DRG) or a closed biopsy (a nonsurgical DRG)).
- Cases with principal diagnoses that do not usually justify admission to the hospital (for example, wax in the ear).

After screening through the Medicare Code Editor and any further development of the claims, cases are classified by GROUPER into the appropriate DRG. The GROUPER program was developed as a means of classifying each case into the appropriate DRG on the basis of the diagnosis and procedure codes and demographic information, that is, sex, age, and discharge status. It is used both to classify past cases in order to establish the DRG weights and to classify current cases for payment.

2. *Operating Requirements of the DRG System.* During the initial operating period of the prospective payment system, we learned that the use of the DRG method of classification poses some operational challenges that we needed to address further. Operational experience and technological advances have led us to identify situations that require positive actions to resolve. These cases include the following:

- Cases that can be classified more accurately with revisions to GROUPER.
- Cases in which we discover that there are unintended omissions or inequities in the classification system (for example, mechanical or conceptual flaws).
- Cases in which a change in Medicare coverage requires assignment of a new item, service, or procedure to an existing DRG or to a new DRG, if necessary.

We believe that the necessity of maintaining a workable payment system requires that we have some latitude in establishing and updating the classification system (which, for that reason was exempted by Congress from judicial or administrative review (section 1886(d)(7) of the Act)). In the paragraphs below, we discuss our proposed process for making changes. Specifically, we discuss our proposed method for dealing with changes in our system of classification that, we believe, need to be made in order to correct problems or to recognize new coverage decisions that are made during the course of the Federal fiscal year (after the update notice for that year has been published).

3. *Proposed Changes to GROUPER.* We have identified a number of improvements to the classification system and have included them in a revised GROUPER program that we used to develop the recalibrated DRG weights published in the addendum to this proposed rule (Table 5). This GROUPER program would be used to classify and assign cases to DRGs effective with discharges occurring on or after October 1, 1985.

Although we have listed all the proposed changes made to GROUPER in Table 6 of the addendum to this document, a description of the general categories of changes we would make are as follows:

- *DRG Logic Issues and Technology Changes:* Experience has indicated that some GROUPER logic decisions could be improved and others should be corrected to reflect technological advances that have occurred since the development of the classification system. The following is an example of a logic problem. In Major Diagnostic Category (MDC) 5, the GROUPER logic results in the assignment to DRG 114 (Upper Limb and Toe Amputation for Circulatory System Disorders) of all cases in which a toe or upper limb was amputated, even if a lower limb was also amputated. Amputation of only a lower limb is classified in DRG 113 (Amputations for Circulatory System Disorders Except Upper Limb and Toe). Currently DRG 113 is weighted 2.6522 and DRG 114 is weighted 2.0848. The logic would be revised so that cases in which only an upper limb or toe is amputated would be placed in DRG 114 and all cases that involve lower limbs, either alone or with upper limbs, would be classified in DRG 113.

An example of a technology and coding problem relates to percutaneous transluminal coronary angioplasty. Coding rules have assigned this procedure to the ICD-9-CM code for removal of coronary artery obstruction; however, there is a tremendous difference between the two procedural techniques. Since percutaneous transluminal coronary angioplasty does not have a unique ICD-9-CM code, it cannot be separated easily from cases

that involve other procedures using the same code. Because these types of coronary angioplasties were not widely used and were not covered under Medicare at the time the DRG system was developed, no consideration was given to separating it from thoracotomies (major surgical procedures assigned to DRG 108 (Cardiothoracic Procedures, Except Valve and Coronary Bypass, With Pump), which has a weight of 4.3301). As a result, the advent of Medicare coverage and the increasing use of percutaneous transluminal coronary angioplasty has resulted in many cases involving this procedure being assigned by GROUPER to DRG 108. DRG 108 bears a weight appropriate to major surgery and is not, in fact, the medically appropriate assignment for percutaneous transluminal coronary angioplasty.

As noted in the summary of GROUPER changes in Table 6 of the addendum to this document, we would reassign this procedure to DRG 112 (Vascular Procedures Except Major Reconstruction), which currently has a weight of 2.3256. This DRG contains other procedures that are clinically suited to percutaneous transluminal coronary angioplasty and bears a weight that reflects the range of resources required for this procedure. Our decision is supported by ProPac's Recommendation 20, which recommends moving this procedure to DRG 112 for many of the same reasons that support our choice.

• *Operating Room versus Non-Operating Room Assignment:* The distinction between medical and surgical DRGs is meant to reflect the difference between cases that use operating rooms (a significant additional resource) and cases that do not. However, a few procedures that do not require the use of an operating room are recognized by GROUPER as operating room procedures. These procedures would be deleted from the list of procedures that could result in assignment to a surgical DRG. For example, code 8623, removal of nail, would be deleted from the list of surgical procedures. Therefore, this procedure alone would not result in assignment of a case to a surgical DRG or, if performed during a stay for an unrelated diagnoses, to DRG 468 (Unrelated Operating Room Procedures).

• *Complication and Comorbidity Membership:* In some cases, DRGs are listed in pairs, one with and one without complications or comorbidities, with a higher weight generally assigned to the DRG that includes complication or comorbidity. A number of additional diagnostic and procedural codes (mostly amputation codes) would be added to the list of complications and comorbidities. These changes would allow cases with these additional codes to be classified in DRGs that reflect the additional resources necessary to deal with complications or comorbidities.

• *Surgical Hierarchy Changes:* An examination of length of stay and charge data has led us to propose a reordering in the hierarchy of surgical procedures in a few cases. For example, surgical procedures in MDC 6 (Disease and Disorders of the Digestive System) would be reordered to assure that when several surgical procedures are present in a case in this MDC, the case would be assigned to the DRG within it that reflects the most resource intensive of the procedures.

• *DRG 468 Issues:* A number of MDCs and DRGs would be modified to include ICD–9–CM codes for surgical procedures that may be performed for diagnoses within them but that are not currently reflected in the particular MDC or DRG. Thus, cases in which these procedures are performed would be recognized by GROUPER and properly classified in the appropriate DRG rather than DRG 468, where they are currently classified.

In addition to these revisions, we are proposing a number of clarifying revisions in the documentation that describes how GROUPER works. Anyone interested in obtaining materials that reflect these changes may purchase revised GROUPER software and ICD–9–CM user manuals from:

Health Systems International, 100 Broadway, New Haven, Connecticut 06511.

These materials should be available after publication of the final rule, when all the changes we have discussed have been incorporated into the program. As mentioned above, a listing of the changes also appears in Table 6 at the addendum to this document.

B. Reclassification of DRGs

In addition to the changes already incorporated into the GROUPER program, we are proposing to make changes in the DRG classification system for alcohol and drug abuse DRGs, certain major joint procedures, and kidney transplants for diabetic patients. These changes would be effective for discharges occurring on or after October 1, 1985. We believe that these changes would improve the accuracy of the classification system and, along with the use of FY 1984 claims data, would result in the establishment of more accurate weights. These changes should also strengthen the relationship between the consumption of resources in the cases whose assignments are affected by these changes and the payments made for these cases. These further changes would be incorporated into the GROUPER program by the time we establish the weights that we will publish in the final rule so that our future payments would reflect these changes. These changes are discussed in greater detail below.

ProPAC, in its Recommendations 18, 19, and 21, advised that the following DRGs should not be revised except to the extent that they are recalibrated as are all the other DRGs.

• DRGs 115 through 118, which involve cardiac pacemakers.

• DRG 39, Lens Procedures.

• DRG 126, Acute and Subacute Endocarditis.

• DRGs 394 and 403, which involve bone marrow transplantation.

We agree with ProPAC and have followed its recommendations with respect to these DRGs.

1. *Alcohol and Drug Abuse DRGs.* In the January 3, 1984 final rule on the prospective payment system, we excluded alcohol/drug treatment hospitals and units from the prospective payment system in response to criticism we received concerning the alcohol and drug abuse DRGs (49 FR 241). In that document, we specified that the exclusion would be permitted only until October 1, 1985, and that after that date we intended to include an adjustment to the DRG classification system that would permit prospective payment to be made appropriately for alcohol/drug treatment services. (See section IV of this preamble for a further discussion of the expiration date of this exclusion.)

The specific DRGs that are being considered in this section are the DRGs within MDC 20 (Substance Use and Substance Induced Organic Mental Disorders); that is DRGs 433 through 438. Commenters had claimed that the current weights do not differentiate between rehabilitation and detoxification. In order to investigate this assertion, we issued an instruction to all providers that, effective May 15, 1984, all claims submitted for treatment of alcohol and drug disorders are to be coded to indicate whether detoxification or rehabilitation, or both services, were provided to patients whose claims were classified within DRGs 433 through 438. We analyzed provider claims for inpatient services concerning these disorders after this coding requirement was added, and found that there are significant differences in resource

consumption depending upon whether or not substance dependent patients received detoxification, rehabilitation, or a combination of these services.

In order to properly reclassify these DRGs, we consulted with medical experts of the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), the National Institute on Alcohol Abuse and Alcoholism (NIAAA), and the National Institute of Mental Health. The following is our proposed reclassification of the substance abuse DRGs within MDC 20 (Substance Use and Substance Induced Organic Mental Disorders):

- DRG 433—Substance Use and Substance Induced Organic Mental Disorders, Left Against Medical Advice.
- DRG 434—Substance Abuse, Intoxication, or Induced Mental Syndrome Except Dependence.
- DRG 435—Substance Dependence, Detoxification and/or other Symptomatic Treatment.
- DRG 436-Substance Dependence, Rehabilitation Therapy.
- DRG 437-Substance Dependence, Combined Rehabilitation and Detoxification Therapy.

This classification is based on two clinical assumptions that are supported by our medical consultants at ADAMHA and NIAAA. Detoxification and rehabilitation therapies are similar regardless of whether alcohol or other drugs are the cause of dependence. For these reasons, the classification of "substance dependence" that combines both alcohol and drug dependence makes the most clinical sense if treatment modalities are considered. The second clinical consideration is that only those patients who are dependent on alcohol or other drugs require detoxification or rehabilitation therapy as these terms are used in our classification.

The case composition of DRG 433 remains unchanged. Proposed DRG 434 contains those cases currently classified in DRG 435 (Drug Use Except Dependence) and DRG 437 (Alcohol Use Except Dependence) and those cases in DRG 438 (Alcohol and Substance Induced Organic Mental Syndrome) except the cases that indicate substance dependence (that is, codes 2910, 2913, 2918, 2919, 2920, 30300, 30301, 30302, 30303, and 30390). Proposed DRGs 435, 436, and 437 contain all those cases currently classified in DRG 434 (Drug Dependence), DRG 436 (Alcohol Dependence) and those cases in DRG 438 that indicate substance dependencies (that is, codes 2910, 2913, 2918, 2919, 2920, 30300, 30301, 30302, 30303, and 30390).

Of this group, those cases of substance dependence in which detoxification or other symptomatic treatment is provided would be classified into proposed DRG 435. Those cases of substance dependence in which rehabilitation treatment is provided would be classified into proposed DRG 436. Those cases of substance dependence in which combined detoxification and rehabilitation therapy is provided would be classified into proposed DRG 437.

In studying the appropriateness of the proposed reconfiguration of the DRGs in MDC 20, we focused on those cases from each hospital with discharge dates occurring after the date the hospital first complied with the May 15 coding instructions. This sample consisted of 5,577 cases from 1,112 different providers nationwide. The relative mix of different institutions (for example, alcohol units, alcohol institutions, general hospitals, psychiatric hospitals and units) represented was approximately proportional to the general mix of provider institutions nationally. A comparison of these data with the larger data set used for recalibration indicated that almost identical relative weights would be obtained from either data set. Hence, in order to treat the DRGs in MDC 20 consistently with other DRGs, the larger recalibration data set was used in deriving the relative weights contained in Table 5 of section IV of the addendum to this rule.

We are proposing to implement this new classification of the DRGs within MDC 20. Alcohol/drug hospitals and units that are currently excluded would be included in the prospective payment period beginning with the first day of a hospital's or unit's cost reporting period that begins on or after October 1, 1985. We recognize that ProPAC's report indicates that this is an issue that requires further study, but we believe that the data we have been able to examine in the past few months do provide a sound basis for making this change at this time.

We believe that these new DRGs provide a better means of distinguishing the many cases in which substance abuse or misuse and other symptoms result in hospitalization and cases in which substance dependence requires both detoxification and rehabilitation. We now have coverage rules in place that clearly describe covered detoxification and rehabilitation care and have already furnished them to the Utilization and Quality Control Peer Review Organizations (PROs). We recognize that these new DRGs will need to be carefully monitored to assure that cases are being properly coded and intend to instruct the PROs to pay special attention to them in admission review and in the course of DRG validation.

2. *Major Joint Procedures (DRG 209).* Hospitals, physicians, and professional societies allege that our current DRG 209 creates a disincentive for performing more than one medically-appropriate major joint procedure of the lower extremity during the same hospital stay. We have learned that some patients may be undergoing two separate hospitalizations when, in fact, the performance of both joint replacements during the same hospital stay might be more appropriate medically. This disincentive results from the high cost of each artificial joint prosthesis as well as the differing clinical course of patients who require this surgery and the nature of the postoperative rehabilitation process associated with lower extremity joint replacement.

Based on consultation with various professional organizations and individual physicians, including the American Academy of Orthopaedic Surgeons and the American College of Surgeons, we conducted a review of all Medicare claims in our 1984 Part A tape bills (PATBILL) file through September 1984 for DRG 209. Our claims data contained 653 cases of bilateral or multiple major joint procedures of the lower extremity including 450 bilateral knee replacements and 203 bilateral hip replacements. They were significantly more resource intensive than single unilateral lower extremity joint replacements. Therefore, for discharges occurring on or after October 1, 1985, we propose to create a DRG for bilateral or multiple major joint procedures of the lower extremity.

We have identified certain combinations of major joint procedures within DRG 209 that may both be performed during the same hospital stay. Each of these procedures requires the implantation of a separate prosthesis. If any two of the listed procedures are performed during the same hospital stay, they would be assigned to a new DRG that contains only those cases in which two major joint procedures, each requiring a separate prosthesis, were performed. Proposed DRG 471 (Bilateral or Multiple Major Joint Procedures of the Lower Extremity) would contain the following codes: 8141, 8148, 8151, 8159, 8161, 8162, 8163, and 8164.

The original composition of DRG 209 would remain unchanged except that all cases indicating the performance of two major joint procedures during the same

admission would be moved to the new DRG 471 representing multiple major joint procedure of the lower extremity. We expect that this process would reduce any economic incentive to perform major joint procedures in two separate admissions instead of during a single hospital stay if it is medically appropriate for the patient.

ProPAC's report indicated that the data available to it at the time the report was issued were not adequate to support a recommendation. However, we have made the change because our study of Medicare claims data enables us to make an adequate distinction between single and multiple cases. As in all cases, we intend to continue to monitor the resource intensity of multiple and single major joint procedures to assure ourselves that this classification remains appropriate.

3. *Kidney Transplants for Diabetic Patients.* We have learned that an anomaly in the ICD–9–CM coding conventions leads to the classification into DRG 468 of diabetic patients with end stage renal disease (ESRD) who receive kidney transplants. Because these cases obviously require the range of resources and the clinical services described for DRG 302 (Kidney Transplant), which currently has a weight of 4.1640, we propose to change the GROUPER program so that diabetic ESRD patients who receive kidney transplants would be properly classified into DRG 302.

C. Recalibration of DRG Weights

The DRG weights currently used in the prospective payment system are based on operating cost information from hospitals' 1981 cost reports as well as patient characteristics, diagnoses, and charge data from the 1981 Medicare provider analysis and review (MEDPAR) file. The MEDPAR file contains inpatient hospital billing records, coded to indicate principal diagnosis, presence or absence of a secondary diagnosis, and one surgical procedure, for a 20-percent sample of Medicare beneficiaries.

The DRG weights were calculated by a methodology involving both cost and charge data. Each case in the MEDPAR file was assigned to a DRG. Then, the average cost per day for routine and special care days for a hospital (adjusted to remove medical education costs and capital-related costs) was multiplied by the number of routine and special care days, respectively, for each discharge in the DRG. In order to derive ancillary costs associated with each discharge, ancillary cost-to-charge ratios for the ancillary cost departments from the cost report data were multiplied by the ancillary charges from the MEDPAR file. The resultant ancillary costs were adjusted to remove an estimate of direct medical education and capital-related costs.

The sum of the routine, special care, and ancillary costs was adjusted for indirect medical education costs, wage differences, and, in Alaskan and Hawaiian hispitals, cost-of-living differences. Cases were eliminated if the cost was greater or less than 3.0 standard deviations from the mean of the logarithmic distribution of the cost per case for a DRG. The average standardized operating cost for each DRG was then divided by the national average operating cost per case for the average hospital to arrive at the DRG relative weight.

One of the basic issues in recalibration is the choice of a data base that allows us to construct relative DRG weights that most accurately reflect current relative resource use. It is possible that we could continue to develop cost-based weights using cost data or a combination of cost and charge data. Alternatively, the relative weights could be based solely on hospital charge information, adjusted or unadjusted for capital costs, teaching, and wage costs. Extensive and recent charge information is available from the FY 1984 PATBILL data set. Effective October 1, 1983, PATBILL contains fully coded inpatient hospital bills for 100 percent of Part A beneficiaries (MEDPAR is a 20 percent sample).

There are three significant advantages to using FY 1984 PATBILL information to develop new relative weights:

- Only if we use these data will we be able to classify cases more accurately than was possible in constructing the current weights. The reason is that FY 1984 PATBILL data contain more detailed information on diagnoses, procedures, age, and discharge destination than does MEDPAR.
- Since FY 1984 PATBILL data are derived from 100 percent of FY 1984 Medicare hospital discharges, the weights will be more reliable for all DRGs. Thus, we will be able to reduce significantly the number of low-volume and empty DRGs compared to what is possible using MEDPAR.
- FY 1984 PATBILL data are the most recent data, and therefore are more reflective of current treatment patterns than is MEDPAR.

We believe that these factors consititute a strong case in favor of using FY 1984 PATBILL data for the FY 1986 recalibration.

However, we have also been considering combining FY 1984 PATBILL data with the latest Medicare cost report data. Our most recent cost report data cover periods prior to October 1982. Therefore, the development of cost weights using FY 1984 PATBILL data would require combining cost and charge data from different periods of time. Since the hospital environment has changed significantly in the two or three years involved, we believe that that approach might make the weights less accurate than the use of charges alone.

In order to determine if DRG relative weights based on charges can accurately reflect the relative resource consumption across DRGs, we conducted a study (described below) that compared relative DRG weights computed based on 1981 costs with those computed on 1981 charges.

1. *Analysis of Charge Information.* Charge-based relative weights were calculated exclusively from 1981 MEDPAR information using essentially the same methodology used to calculate the 1981 cost-based weights. The charge-based weights were restricted to the same 358 DRGs for which the 1981 MEDPAR file contains a sufficient number of cases to yield reliable weights. These charge-based weights were then compared to a set of cost-based weights. The only difference between this comparison set of cost-based weights and the weights published in the original September 1, 1983 interim final rule is that these were not renormalized to accommodate external data for the remaining 109 DRGs.

In computing the charge-based weights, we used the same assumptions and procedures as were used in computing the cost-based weights except that capital-related expenses and medical education costs (direct and indirect) were removed from the cost-based weights but not from the charge-based weights.

We found a high degree of similarity between the cost-based weights and the weights based on 1981 charges for the 358 DRGs that were included in the analysis. The difference in the two sets of weights is less than five percent for most DRGs. In addition, the structure of the relative weights across DRGs for each method is also very similar. The Spearman correlation coefficient, which measures the correspondence of the rank ordering of pairs of observations, and the Pearson product moment correlation coefficient, which measures the correspondence of actual values between two sets of observations, are both greater than .99. These results reflect a high degree of correspondence

between the cost-based and charge-based weights.

Based on the results of this analysis, we believe that for this recalibration DRG weights based on charge data would provide an accurate measure of the relative resource consumption across DRGs. In addition, the recalibration of DRG weights based on charge data would permit the use of recent billing data that include case experience under the first year of the prospective payment system. Therefore, at this time, DRG weights based on charges should be more reflective of current technology and treatment patterns. However, we will continue to study this issue and may consider other options as we refine our analysis and in future recalibration efforts.

Recalibration based on charge data is supported by ProPAC's Recommendation 17. ProPAC concludes that, at the present time, charge data are the most recent and detailed data we have available.

2. *Recalibration of DRGs Based on Charge Data.* The recalibrated DRG relative weights were constructed from FY 1984 PATBILL data received by HCFA through December 1984, which contain almost 90 percent of all Medicare discharges occurring in FY 1984, the first year of the prospective payment system. Approximately 40 percent of these discharges were paid under the prospective payment system, and 60 percent on a reasonable cost basis under the rate of increase limits and State demonstration waivers. The PATBILL data include approximately 10.2 million Medicare discharges.

The methodology used to calculate the DRG weights is as follows:

- All the claims were reclassified using the proposed revised GROUPER program.
- The average charge per DRG was calculated by summing the total charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.
- We then eliminated statistical outliers using the same criterion as was used in computing the current weights. That is, all cases outside of 3.0 standard deviations from the mean of the log distribution of charges per case for each DRG were eliminated from the calculation of the average charge per DRG.
- The average charge for each DRG was then recomputed excluding the statistical outliers and divided by the national average charge per case for the average hospital to determine the weighting factor.
- No adjustments were made to the charges to remove capital-related and medical education costs. However, the charges were standardized for wage differences using the proposed survey-based wage index and for variations in teaching activity.
- Kidney acquisition costs continue to be paid on a reasonable cost basis, but, unlike other excluded costs, kidney acquisition costs are concentrated in a single DRG (DRG 302, Kidney Transplantation). For this reason, it was necessary to make an adjustment to prevent distortion of the relative weight for DRG 302. Kidney acquisition charges were subtracted from the total charges for each case in DRG 302 prior to computing the average charge for the DRG and prior to eliminating statistical outliers.

The weights developed according to the methodology described above were normalized so that the average case weight after recalibration is equal to the average case weight prior to recalibration. This normalization is supported in general by ProPAC's Recommendation 17. ProPAC recommended that this method be used to incorporate DRG weight adjustments made before the start of FY 1985. (See section II. A.3.a. of the addendum for further discussion of Recommendation 17 concerning adjustments for case mix.)

3. *Low Volume and Empty DRGs.* As discussed above, we used data from the 1981 MEDPAR file and 1981 Medicare cost reports to establish the current set of DRG relative weights. However, there were 109 DRGs that either contained no MEDPAR cases or had too few cases to provide a reliable weighting factor. In order to construct a full set of relative weights, we supplemented the MEDPAR file with discharge records from Michigan and Maryland. The combined data sets were then used to calculate the weighting factors for the 109 low volume or empty DRGs.

By using the 1984 PATBILL data set, which contains the entire universe of fully coded Medicare claims, rather than the MEDPAR file, which is a 20 percent sample of claims, the number of low volume and empty DRGs is greatly reduced. In addition, sampling error is no longer a concern, which means that, in theory, a DRG weight could be constructed from a single case. In practice, however, we believe that some minimum number of cases is required to compute reasonable weights. We considered using minimum numbers of cases that ranged from 1 to 50 cases. We are proposing to use a minimum of 10 cases because we believe this to be a reasonable threshold.

In computing weights for the low volume and empty DRGs, we could repeat the process used for the original weighting; that is, using non-Medicare data for other sources. This option is extremely time consuming and complex since it involves obtaining raw data from outside sources and performing extensive data processing to edit and standardize data, compute weights for each data set, and merge those weights with Medicare-based weights. Because this method essentially uses non-Medicare claims to set weights for the Medicare population (and those populations differ in some significant ways), it is not clear how meaningful the results are for our purposes. Therefore, although it was reasonable to use this method for the first weighting, we do not believe it should be repeated because use of the FY 1984 PATBILL data results in a reduction in the number of low volume DRGs from 109 to 30.

We decided to adjust the original weights of the 30 low volume and empty DRGs that would still be present after our proposed recalibration by the percent change in the weight of the average case in the remaining DRGs. Therefore, we would adjust the original weights of the DRGs involved downward by three percent. However, the renormalization of the entire set of relative weights involves adjusting the weights upward by three percent. The combined effect of these adjustments on the 30 low volume and empty DRGs is to leave their relative weights unchanged.

The DRG weights established in this manner for low volume DRGs are appropriate for Medicare discharges, especially in view of the fact that, among the over 10 million Medicare discharges, only 50 discharges were classified into these DRGs. However, State Medicaid agencies and other payors of health care services that may be interested in using a hospital prospective payment system should recognize that DRG classifications and weights developed from Medicare discharges may not be appropriate for use in the payment of non-Medicare cases. For example, if patient populations other than the Medicare population are involved, diseases such as cystic fibrosis may be weighted differently. This is particularly true in the case of low volume DRGS, many of which are for pediatric diagnoses, which are rare among Medicare beneficiaries. Therefore, other payors interested in using the DRG classification system may wish to develop DRG groupings and weights for these types of diagnoses using data more appropriate to their respective beneficiary populations.

D. Procedures for Making Changes During the Year

We plan to make most of the changes we would want to make in the GROUPER program or the DRG classification system at the same time we publish the annual prospective payment rate notices required by § 412.8(b) in order to make the system as predictable as possible during the year. However, as we have noted, we believe that this interest may occasionally be overridden by the need to make certain changes on a more current basis to—

- Account for new items and procedures that become covered under Medicare during the course of the year; and
- Correct omissions or inequities that have a potentially adverse impact on beneficiaries or a significant and unwarranted fiscal impact on the system.

The process by which the need for the changes and the nature of the changes to be made are identified will vary to some extent with the nature of a particular issue. However, we have described below the general process we propose to follow in developing the issues, as well as the procedures we would use for implementing the changes. These procedures would be set forth in a new § 412.10.

1. *New Coverage Decisions.* A decision to provide Medicare coverage of a new item or procedure must, in the interest of fairness to beneficiaries and hospitals, be accompanied promptly by a decision on the appropriate DRG classification of cases including the newly covered item or procedure. In some cases, we may need to establish a new DRG in order to accommodate the new coverage decision.

We have an established process by which we deal with proposals to change coverage under the Medicare program. This process includes review of the issues by a panel of HCFA physicians and, in some cases, referral to the Public Health Service for a recommendation if additional medical expertise is required. We plan to maintain this process and to supplement it, once medical advice is received, by the procedures described below in this section. Individuals and organizations wishing to recommend expansion of coverage to inclued new items or services should continue to follow existing practices.

In making a decision as to payment for newly covered items or procedures under the prospective payment system, we propose to use the clinical, cost, and charge data available to us at the time. In deciding how to assign a new item or procedure to a DRG, create a new DRG, or alter the weight of an existing DRG, we propose to follow the same principles that governed the development of the original DRG system; that is, the cases must have clinical coherence and a relatively similar resource intensity.

2. *Coding Issues.* A new procedure may need to have an ICD–9–CM code assigned to it, and there may be some dispute as to which code is appropriate or there may be no appropriate code. HCFA is working with the National Center for Health Statistics (which is responsible for ICD–9–CM), the American Hospital Association, the American Medical Records Association, and the Commission on Professional and Hospital Activities to establish a task force to deal with these issues. Decisions about coding would be announced by HCFA to all appropriate parties through its issuance system.

3. *Omissions and Inequities.* We may identify cases in which the GROUPER logic works unintended inequities that because of their magnitude require immediate correction. For example, as mentioned earlier, kidney transplants are normally classified into DRG 302 (Kidney Transplant), which has a weight of 4.1840; however, because of an ICD–9–CM coding convention, certain diabetic ESRD patients who are admitted with a principal diagnosis related to diabetes with renal manifestation and who receive a kidney transplant are assigned to DRG 468 (Unrelated Operating Room Procedure), which has a weight of 2.0818.

With one exception, which is described below, we have not corrected this problem or made any significant DRG classification changes until now because we had not stated in previous documents that we would make changes outside of the recalibration and reclassification effort prescribed by section 1886(d)(4)(C) of the Act. However, we believe that when we identify cases such as these, which have a major fiscal impact, it is appropriate to deal with them as soon as possible after they are discovered so that appropriate levels of payment would be made. The one change we have made already is to add coverage for two types of lithotripsy procedures so that Medicare beneficiaries could benefit from the procedures and hospitals could be paid for them. In the case of these procedures, it was possible to incorporate them into the system by identifying the appropriate DRG and assigning an appropriate code.

If the GROUPER program is not capable of assigning cases to the DRG that we have found to be appropriate, the Medicare Code Editor or manual claims review may be considered for use in the interim until GROUPER changes can be made.

We are including below a full discussion of the process by which we determined how to make the lithotripsy change as a example of the approach we plan to take with interim changes. Of course, our decision is subject to comment at this time.

- Extracorporeal Shock Wave Lithotripsy: Extracorporeal shock wave lithotripsy is a new medical technology that permits noninvasive treatment of kidney stones by the nonsurgical fragmentation of stones with focused hydraulic shock waves. We have recently provided Medicare coverage of the treatment of upper urinary tract stones by extracorporeal shock wave lithotripsy. Our decision to provide coverage was based on the recommendations of the Office of Health Technology Assessment of the Public Health Service (PHS), which determined that this treatment is safe and effective for upper urinary tract stones. Our decisions on DRG placement and coding were based on a thorough study of the information available.

Included in our studies were surveys of hospital resource consumption, charges, cost estimates, and characteristics of patients of each of the six medical centers currently performing extracorporeal shock wave lithotripsy. Information based on over 2,000 cases (for procedures performed during trials for Food and Drug Administration premarketing approval) was obtained from the University of Virginia Hospitals, Charlottesville; Cornell University Medical Center, New York Hospital; Massachusetts General Hospital, Boston; Shands Hospital of the University of Florida, Gainesville; Baylor University Medical Center, Houston; and Methodist Hospital, Indianapolis.

Our medical record consultants informed us that ICD–9–CM code 5995 is the most appropriate existing code for extracorporeal shock wave lithotripsy. This code should be used when submitting claims for this procedure. We are proposing to continue this classification, which causes the procedure to be grouped into DRGs 323 and 324 (Urinary Stones).

However, as in all cases, we intend to continue to monitor the resource intensity of extracorporeal shock wave lithotripsy to assure ourselves that this classification remains appropriate.

- *Percutaneous Lithotripsy:* Percutaneous lithotripsy is a method by which urinary stones are fragmented and removed through a small surgically

created passage between the urinary tract and the overlying skin. This is often accomplished by a surgical procedure called a nephrostomy.

We have recently extended Medicare coverage to the treatment of certain urinary stones by percutaneous lithotripsy. Our decision again was based on the findings of PHS that percutaneous lithotripsy is considered safe and effective treatment for certain urinary tract stones. Effective March 15, 1985, we implemented a coverage instruction allowing payment for percutaneous lithotripsy.

Although ultrasonic fragmentation of kidney stones is not recognized as an operating room procedure within GROUPER, this procedure is often performed in conjunction with standard surgical procedures such as a nephrostomy. If these standard surgical procedures are performed during the same hospitalization as an adjunct to the lithotripsy, and are appropriately coded, GROUPER assigns the case to the associated surgical procedure (for example, DRG 304 or 305 for nephrostomy). If no recognized operating room procedure is performed during the same hospitalization as the one in which the lithotripsy is performed, then the case is assigned to DRG 323 or 324 (Urinary Stones). This situation should occur rarely, such as those cases in which lithotripsy is performed through a patient nephrostomy that existed at the time of admission. We believe that these DRG assignments continue to be appropriate for percutaneous lithotripsy.

ProPAC's report recommended deferring action on this issue. However, since this report was issued, we received the recommendation from PHS indicating that this procedure was safe and effective for the applications for which coverage is being extended. Also, we believe that the reasons discussed above fully support the DRG assignment that will be made.

We recognize that our proposal on making changes during the year avoids the rulemaking process and a full discussion of the issues relating to the changes, as well as opportunity for public comment. We believe, however, that our decision to make limited changes in this way is consistent with the view of Congress, which exempted the establishment, methodology, and weighting of diagnosis related groups from judicial review because of their complexity and " * * * the necessity of maintaining a workable payment system." (H.R. Rep. 25, 98th Cong., 1st Sess. 143 (1983).) It is our intent, nonetheless, to correct any errors we may have made as soon as possible and to submit all changes we have made during the year, as well as changes we propose to make during the next year, for comment in the next annual update notice.

Interim changes would be made by means of HCFA's administrative issuance system and would be made effective as soon as is operationally feasible. While we would not delay the implementation of these changes, any information we receive would be considered in determining whether further interim changes should be made.

We would stress, however, that we anticipate few changes would be made during the year. It is necessary to include newly covered items and services as soon as possible so that beneficiaries are protected from liability for them as provided under § 412.42. It is also necessary to make changes when an omission or inequity is discovered which inappropriately disadvantages either the beneficiaries, the hospitals, or the Medicare Trust Fund. For example, we would have preferred to make the change relating to diabetic patients who require kidney transplants (described above) as soon as possible to avoid disadvantage to the patients or providers.

Our approach to these issues reflects our agreements with ProPAC, which suggested a similar approach with respect to percutaneous transluminal coronary angioplasty. The inequity, which in this case was to the Medicare program, resulted because the relative novelty of the procedure at the time the DRG system was developed caused it to be overlooked and the ICD–9–CM code assigned to it caused it to be grouped inappropriately with open heart surgery.

Recommendation 20 from the ProPAC report states that in the case of percutaneous transluminal coronary angioplasty, we should immidiately implement a mechanism to correct the problem and follow-up with a formal change in GROUPER. ProPAC's rationale was that the classification was so clearly inappropriate from both a medical and resource standpoint that an immediate change was warranted. As we have noted, we have not yet made these changes because we believe that a prior notice of our intentions to establish a process for interim changes should be given. However, in the future, for issues such as these, we plan to follow the advice of ProPAC and make changes at the point that the need for change becomes apparent.

While we expect to makle changes during the year infrequently, we believe that situations such as the ones described above warrant this type of action. We recognize that in some cases, some members of the provider community may face a reduction in payment (as would have been the case in the event of a midyear percutaneous transluminal coronary angioplasty change). In other cases, an increase in payment would result (for example, the case of kidney transplants provided to diabetic patients). However, we believe that it is necessary to make corrections and modifications during the year in order to correct anomalous situations or to pay for new procedures. These changes are necessary to assure that proper payment is made and that the diffusion of new and improved medical practices and technology are not retarded by this payment system and that the system remains current.

III. Development of a New Hospital Wage Index

A. Basis of Proposed Wage Index

Section 1886(d)(2)(C)(ii) of the Act requires that we standardize the average cost per case of each hospital used to develop the separate urban and rural standard amounts 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 the national rates be adjusted for hospital area wage levels as part of the methodology for determining the prospective payments to hospitals.

We used calendar year 1981 hospital wage and employment data obtained from BLS's ES 202 Employment, Wages and Contributions file for hospital workers to construct the wage index, applied under both of the above provisions of the Act, for computing prospective payments to hospitals during FY 1984 and FY 1985. The BLS ES 202 system compiles information on employment and total wages for workers covered by unemployment insurance.

We have been aware since the beginning of the prospective payment system of certain limitations of the BLS data, especially with regard to the lack of information on hours of employment or full-time equivalents. The BLS data provide information only on the number of workers employed at a hospital and their aggregate salaries. As a result, area wage indexes produced from these data do not distinguish between part-time and full-time employees. Although we recognized these shortcomings, we believed the disadvantages were outweighed by the advantage of being able to utilize the best national data available.

In response to the September 1, 1983 interim final rule (48 FR 39752), we received many comments concerning the nature and potential impact of limitations in the BLS data. The commenters believed that using these data to construct the hospital wage index resulted in inaccurate and improper geographic variation in prospective payment rates. Because the area wage index can have a substantial impact on the amount of a hospital's payment, the accuracy of the index values is essential. We concluded from these comments that we needed to examine critically those limitations in the wage index that seemed of greatest concern in order to ensure the accuracy of the payment rates and, thereby, to maintain confidence in the equity of the prospective payment system. For this reason, we established a joint workgroup with representatives of the hospital industry from across the country to evaluate alternatives to the current wage index.

This workgroup agreed that the most serious technical limitation of the BLS data was its inability to take into account differing part-time employment practices. The workgroup decided that this problem should be addressed immediately, and to correct this limitation, it was decided that we would collect our own data through a survey of hospitals subject to the prospective payment system. We devised a survey form and instructions for collecting financial data that would permit the analysis of options for the construction of an improved wage index.

This survey provided for the extraction of specific hospital salary and fringe benefit data from the Medicare cost report for hospital fiscal years ending in calendar year 1982, and for the extraction from hospital records of data on paid hours worked. These survey forms were disseminated through the Medicare fiscal intermediaries on March 16, 1984. A complete description of the survey, as well as the initial survey results, can be found in the proposed rule published on July 3, 1984 (49 FR 27439) and the final rule published on August 31, 1984 (49 FR 34764).

It was our intention to use the information from this survey to calculate a new wage index for the FY 1985 prospective payment rates. However, as explained in the July 3, 1984 proposed rule, we were unable to implement a new wage index developed from the survey because a high proportion of the survey reports as submitted by hospitals were either incorrect or otherwise suspect as to their accuracy. Therefore, the prospective payment rates for FY 1985 were developed from the same 1981 BLS wage indexes previously published on September 1, 1983 (48 FR 39871), updated to reflect the most recent corrections in the 1981 ES 202 data and changes in metropolitan area definitions.

As of December 12, 1984, we had received survey reports from 5,734 non-Federal hospitals. Of these reports, 94 represented data from hospitals that are currently not subject to the prospective payment system (that is, psychiatric, rehabilitation, cancer, and long-term hospitals). These data were excluded from the survey data base. Also, we excluded data from seven hospitals that had changed ownership in 1982 or later and for which validated data could not be obtained. Thirty-eight additional hospitals were excluded because of technical deficiencies in their data. Therefore, records from 5,595 hospitals were included in our survey data base.

As a further check on the accuracy of the reported survey data, we, in conjunction with the Department's Office of the Inspector General, initiated a limited scope audit of the data from a number of surveyed hospitals. This audit was used to verify the key data elements from the survey reports that are used in the computation of the proposed wage index. Approximately two-thirds of the survey reports audited were from hospitals that are located in areas where our analysis indicated that the application of the HCFA gross wage index would have resulted in FY 1984 prospective payment rates per discharge that varied by more than ten percent from payment rates using the BLS wage index. As expected, the greatest number of, as well as most significant, audit adjustments were made to the survey data from hospitals located in the aberrant areas. The corrected records were incorporated into the survey data base.

B. Computation of Proposed Survey-Based Wage Index

We computed two hospital wage indexes using the data from the 5,595 hospitals remaining in the survey data base. One index is derived from gross hospital salaries; the second index is developed from adjusted gross hospital salaries. Adjusted gross salaries are defined as the net of wages for and hours worked by contracted labor, interns and residents, personnel employed in nonhospital cost centers, and hospital-based physicians.

The two indexes were developed from different categories of hospital workers. the index based on gross salaries and wages measures the difference from area to area in gross hospital wages; that is, the wages paid to all hospital workers, including contract labor, interns and residents, provider-based physicians, and workers employed by the hospital but working in areas of the facility other than the hospital inpatient area. The other index is based on adjusted salaries and hours; that is, it eliminates the effect of contract labor, interns and residents, provider-based physicians, and hospital workers in areas of the facility other than the hospital inpatient area.

Both indexes control for regional differences in part-time employment since they are based on the average hourly wage in each urban or rural area. However, because many hospitals have indicated that they had difficulty in determining the wages and salaries and hours worked for the excluded worker categories used to develop the adjusted gross wage index, that index is probably not as accurate as the gross wage index.

The prospective payment system is built upon the concept of averaging. The standardized rates are based on the averages of hospital average inpatient operating costs per discharge in urban and rural areas within the nine census regions and the nation. Similarly, the wage index is constructed using average hospital wages in each urban and rural area compared to a national average wage.

In such a system, the effect of individual differences is mitigated by the inclusion of large numbers of entities. Because the system is comprised of many hospitals and many workers, variations in the practices of individual hospital need not have a pronounced effect on the area average.

In over 90 percent of the urban and rural areas, both the gross and adjusted wage indexes change in the same direction when compared to the BLS index. In effect, using either survey-based wage index would not change the national outcome appreciably, although there would be significant differences in impact between the two indexes in some areas.

Because the precision of the adjusted gross wage index is more problematic, we believe that the gross wage index is the better of the two wage indexes derived from the HCFA wage survey. The gross index we would use is derived from gross hospital salaries and accounts for regional variation in part-time employment and length of work week by using an average hourly wage instead of an average monthly wage, as the basis for measuring local differences in wage levels.

The results of our survey may prove to be unexpected to some. Although the survey-based data, which accounts for geographic differences in the use of part-time workers, was expected to favor rural areas, this did not occur in the aggregate as shown in Appendix A. Nevertheless, it is true that for many rural areas, the survey-based wage index is higher than the current 1981 BLS wage index. In view of these results and since the data series employed in the construction of the survey-based wage index is dissimilar from that used by BLS, we specifically request comments regarding possible alternatives to use of the survey-based gross wage index. In addition to soliciting comments as discussed in section I.B. of the preamble, we would appreciate receiving suggestions on how we should update the HCFA survey-based wage index if that is the index we decide to use. For example, we could do a new survey every two or three years, or we could request that hospitals submit additional data with their cost reports or as a part of some other reporting vehicle.

The method used to compute the proposed wage index (Tables 4a and 4b of the addendum) is as follows:

Step 1—Each of the 5,595 non-Federal acute care hospitals subject to the prospective payment system, for which a properly completed survey form has been received, is classified into its appropriate urban or rural area based on the Executive Office of Management and Budget's (EOMB's) metropolitan statistical area (MSA) definitions that were affective June 30, 1984, with the addition of a change in the St. Louis MSA that became effective after October 1, 1984, and which would be recognized prospective payment purposes beginning October 1, 1985.

Step 2—For each hospital, the total gross hospital salaries (item 4 on the survey report) are inflated from the end of the hospital's cost reporting year through the end of calendar year 1982 using the annual 1982 rate of increase in the wages and salaries portion of the hospital market basket. The annual rate was 11.0 percent. This is done to eliminate any distortion in the data caused by differing hospital cost reporting years.

Step 3—For each hospital, the inflated gross hospital salaries computed in step 2 are divided by the reported number of total paid hours worked (item 12 on the survey report) to yield an average hourly wage.

Step 4—Hospitals with an aberrant average hourly wage, which is defined as an average hourly wage either less than $3.35 (the minimum wage in 1982) or greater than $19.58 (2.5 times the 1982 national average hourly hospital wage as reported in BLS' *Employment and Earnings Bulletin* as of February 1984), are excluded. This results in the elimination of records from 73 hospitals.

Step 5—Within each urban or rural area, the result computed in step 2 is summed for all remaining hospitals to yield the total gross hospital salaries in each area.

Step 6—The total gross hospital salary result computed in step 5 is divided by the corresponding total number of paid hours worked to yield an average hourly wage for each urban or rural area.

Step 7—The arithmetic mean of the result in step 6 is computed across all urban and rural areas to obtain the national average hourly hospital wage based on gross salaries. The national average is $8.03.

Step 8—For each urban or rural area, the hospital wage index is calculated by dividing the average hourly wage computed in step 6 by $8.03, the national average.

The wage index values listed in the addendum may differ slightly from those included in our March 29, 1985 report to Congress on the HCFA wage index. These differences result from a statutory change in the St. Louis MSA definition as well as revised audit adjustments that were made subsequent to the issuance of the report.

C. Retroactive Application of Proposed Wage Index

On July 18, 1984, while we were conducting our survey, Congress enacted section 2316 of Pub. L. 98–369, which requires the Secretary to conduct a study to develop an appropriate wage index that specifically addresses the part-time employment problem. As mentioned above, this study was presented to Congress on March 29, 1985. We are continuing to examine the limitations and advantages of the survey-based and the BLS wage indexes. In addition, section 2316(b) specifies that any changes made in the wage index under that provision of the law are to be retroactive to cost reporting periods beginning on or after October 1, 1983. We specifically request comments on this issue of retroactivity.

We believe that applying the survey-based wage index retroactively would be inconsistent with a major premise of the prospective payment system, which is that hospitals know in advance of each discharge the amount they can expect to be paid by Medicare. We maintain that, under this system, retroactive adjustments would erode the prospective nature of the system.

Despite our concerns about the retroactive application of a new wage index, we must comply with the requirements of section 2316(b) if the survey-based wage index were adopted. Therefore, in such a case, we would make the appropriate payment adjustments to overpaid and underpaid hospitals throughout FY 1986. The survey-based wage index used to determine the amount of a hospital's underpayment or overpayment would be based on the recognized MSA definition in effect for the entire cost reporting period for which the payment adjustment determination is being made.

We believe that spreading the payment adjustments over the course of one year, rather than requiring lump-sum payments, would minimize the negative impact on overpaid hospitals. Therefore, to accomplish these adjustments, we would require that overpaid hospitals make 26 equal payments to us throughout FY 1986. Conversely, we would make 26 equal payments to underpaid hospitals over the same period of time.

IV. Other Proposed Regulations Changes and Current Provisions

A. Rate of Increase Limits (§ 405.463)

Section 101 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248) added section 1886 to the Act in an attempt to restrain growth of hospital costs. Specifically, as originally enacted, section 1886(b) of the Act set forth a program of control on hospital cost increases. This provision required that we establish a ceiling target level for the allowable rate of increase of hospitals' inpatient operating costs per case. In addition, the statute provided for incentive payments for hospitals that keep their costs below the target, and penalties for hospitals that incur costs greater than the target.

This target rate system was expected to apply only to hospital cost reporting periods beginning before October 1, 1985 (section 1886(b)(2) of the Act). However, Pub. L. 98–21, which established the prospective payment system, also extended the target rate system indefinitely for all hospitals excluded from the prospective payment system by repealing section 1886(b)(2) of the Act.

1. *Target Rate Percentage.* Each hospital's target amount is increased annually, before the beginning of its cost reporting period, by an applicable target rate percentage for the 12-month period, prorated based on calendar year target rate percentages. As set forth in section 1886(b)(3)(B) of the Act as amended by 601(b) of Pub. L. 98–21, the target rate percentage was the estimated hospital

market basket increase factor plus one percentage point.

Section 2310 of Pub. L. 98-369 revised section 1886(b)(3)(B) of the Act to provide that, for cost reporting periods beginning in FY 1985, the annual inflation rate to be applied for updating the target rate is equal to the estimated hospital market basket increase factor plus one-quarter of one percentage point. Beginning in FY 1986 (cost reporting periods beginning on or after October 1, 1985), the target rate percentage will be adjusted by an update factor determined by the Secretary under section 1886(e)(4) of the Act, considering the recommendations of ProPAC under section 1886(e)(2) of the Act.

Currently, § 405.463(c)(3)(i) states that the target rate percentage is equal to the estimated increase in the market basket index plus one percentage point. We are proposing to revise § 405.463(c)(3)(i) to reflect the changes made by Pub. L. 98-369.

2. *Exemption for New Hospitals.* When we published the regulations implementing section 101 of Pub. L. 97-248 on September 30, 1982 (47 FR 43282), we included a provision that exempted new hospitals from the target rate system (§ 405.463(f)(1)). A new hospital is a provider of inpatient hospital services that has operated as the type of provider for which it is certified for Medicare participation under present and previous ownership, for less than three full years. We exempted new hospitals from the rate of increase limits to prevent the distortion inherent in a new hospital's operating cost per case from adversely affecting its target rate reimbursement. This exemption expired at the end of the earliest of—

- The first cost reporting period beginning at least two years after the hospital accepts its first patient; or
- The first cost reporting period beginning on or after October 1, 1985 (that is, the statutory expiration date for the rate of increase limits).

However, when we revised the regulations at § 405.463 in the September 1, 1983 interim final rule with comment period, we inadvertently did not delete the October 1, 1985 date from § 405.463(f)(1). Therefore, under the current regulations, for cost reporting periods beginning on or after October 1, 1985, new hospitals that are excluded from the prospective payment system will be subject to the rate of increase limit.

Since the reasons for providing a new hospital exemption remain as valid today as when the target rate system was first established, and since the statutory termination date of October 1, 1985 has been repealed, we are proposing to revise § 405.463(f)(1) by deleting the October 1, 1985 expiration date for the exemption.

B. Exclusion of Alcohol/Drug Hospitals and Units (§§ 412.23 and 412.32)

In the January 3, 1984 final rule, we developed a set of criteria for the exclusion of hospitals and distinct part units that specialize in alcohol/drug dependency treatment. As provided in §§ 412.23(c) and 412.32, this exclusion terminates on October 1, 1985. However, if the exclusion expires on that date, all excluded alcohol/drug hospitals and units, regardless of their actual cost reporting period, would have to close their books and file cost reports as of September 30, 1985.

Since we originally intended these hospitals and units to be excluded for a full two years from the prospective payment system and because we believe it would be inappropriate to force excluded entities to close their cost reporting periods on September 30, 1985, we are proposing to revise §§ 412.23(c) and 412.32. As revised, the exclusion would expire at the end of the hospital's cost reporting period that began before October 1, 1985. Formerly excluded alcohol/drug hospitals and units would no longer maintain any separately recognized program (for example, a subprovider number or separate cost accounting). These entities would become indistinguishable from other prospective payment hospitals.

C. Review Activities

1. *Responsibility for Medical Review (Subparts C and F of Part 412).* In the January 3, 1984 final rule, we used the term "medical review entity" to describe the various organizations that would be performing inpatient hospital medical review (49 FR 282). We used this term because, at that time, we had not implemented the Utilization and Quality Control Peer Review Organizations (PRO) program. Until the PROs were in place, PSROs and fiscal intermediaries were responsible for determining the medical necessity, appropriateness, and quality of care as well as performing DRG validation. In addition, they were responsible for providing appropriate medical determinations in connection with coverage rules. To avoid confusion, we used the term medical review entity to refer to any of these organizations (that is, PSRO, PRO, or intermediary).

Now that the PROs are fully functioning, they have the responsibility for the medical review of hospital claims. Therefore, in Subparts C and F of Part 412, we are proposing to replace all references to medical review entities, PSROs, and to fiscal intermediaries, as appropriate, with a reference only to PROs.

2. *Limitations on charges to beneficiaries (§ 412.42).* In the January 3, 1984 final rule, we added § 405.472(b)(1)(iii) (since redesignated at § 412.42(c)) to allow hospitals to charge beneficiaries for items and services excluded from coverage on the basis of § 405.310(g) (custodial care) or § 405.310(k) (medically unnecessary services) if certain conditions are met and the services are furnished by the hospital. The conditions are the following:

- The hospital determines, with the concurrence of either the beneficiary's attending physician or the PRO, that the beneficiary no longer requires inpatient hospital care.
- The hospital notifies the beneficiary in writing of that determination.

We provided this mechanism because the prospective payment system did not change Medicare's coverage rules and was not intended to prevent a hospital from charging a beneficiary for a noncovered service that he or she might choose to receive. In order to ensure that beneficiaries are protected from liability for noncovered services about which they had not been informed, we included § 412.42(c)(3), which requires that the written notice contain specific information.

Since implementation of the PRO program, we have received inquiries from some hospitals and hospital associations, in States which either have a State cost control system approved under section 1886(c) of the Act or participate in a demonstration project authorized under section 402(a) of the Social Security Amendments of 1967 (Pub. L. 90-248) or section 222(a) of the Social Security Amendments of 1972 (Pub. L. 92-603), concerning the hospital's authority to charge beneficiaries for custodial or medically unnecessary care. Before the PRO program, many of these hospitals were delegated the PSRO review function; that is, they could review and deny services by issuing denial letters to beneficiaries. Under the PRO program, however, they no longer are delegated this authority.

Hospitals paid under a State cost control system or demonstration project believe that they are at a disadvantage as opposed to prospective payment hospitals. They argue that they may be faced with situations in which they have to provide medically unnecessary or custodial care and there is no administrative mechansim that enables the hospitals to notify the beneficiary of

noncoverage in a manner that the State will find provides a satisfactory basis for Medicaid payment for an ICF level of care in the hospital. The hospitals can give notices of noncoverage under the waiver of liability regulations (§ 405.332). However, these notices, unlike the notices under the stricter requirements of § 412.42(c) applicable to prospective payment hospitals, can be given without the concurrence of either the attending physician or the PRO. Thus, the States operating under a State cost control system or demonstration project are not prepared to accept these notices as a basis of Medicaid payment to the hospital for an ICF level of care. The hospital must wait for Medicaid payment until the PRO makes a retrospective determination regarding the level of care furnished.

We agree with the hospitals and, therefore, propose to amend the regulations by adding a new § 405.308 to provide that the notice requirements of § 412.42(c) rather than § 405.332 would apply when a hospital receiving payment under a State cost control system or demonstration project gives notices that a beneficiary who has been admitted for covered care no longer requires inpatient hospital services.

We have learned that many prospective payment hospitals have inappropriately implemented the notice process required by § 412.42(c), resulting in a detrimental effect on beneficiaries and inappropriate program payments. Some examples of inappropriate practices have included the following:

- Notices that do not contain all of the required elements.
- Notices that do not make it clear that the *hospital*, with the concurrence of the attending physician or the PRO, has determined that the patient no longer requires hospital care. (The language of some notices has implied, in effect, that Medicare will no longer pay for the hospital stay or that Medicare benefits have been exhausted, or the language fails to fix responsibility for the decision on the hospital).
- Notices that give an incorrect date on which the beneficiary will become responsible for charges and sometimes make the beneficiary responsible retroactively to the date of admission. (In some cases, the notice is given after discharge).
- Some hospitals have not given specific notices but rather have required the beneficiary to sign a blanket statement upon admission accepting responsibility for whatever Medicare may not cover. The hospital then charges the beneficiary later if Medicare finds the stay or any part of the stay noncovered.
- Some hospitals "discharge" a beneficiary from Medicare status and "readmit" him or her on a private pay basis without issuing a proper notice and without the beneficiary leaving the hospital bed. The hospital then charges the beneficiary from the point of "readmission".

These practices create financial burdens on beneficiaries that are often inappropriate and that were unintended when the requirements of § 412.42(c)(3) were written. In addition to causing confusion, fear, and frustration for the beneficiaries, these practices lead to inappropriate payments by beneficiaries and the Medicare program. Some of the care in question may well have been covered and, as such, included in the program's payment to the hospital. In other cases, under Medicare law and regulations, liability for the noncovered care might have been assigned to the hospital.

However, we believe that these difficulties may have been due, in part, to misunderstandings by hospitals as to how the prospective payment system operates, and, therefore, we have issued instructions to the PROs on this subject. The instructions (PRO manual, Interim Manual Instruction, Transmittal No. 85-3) specify that the PROs are responsible for monitoring the notices used by hospitals and provide further guidance on the appropriate content of the notices.

We plan to continue to monitor this situation carefully to ensure that inappropriate notices are no longer being provided. If the situation does not improve, we will consider removing this provision from the regulations to preclude hospitals from charging beneficiaries for items and services excluded from coverage on the basis of custodial care or medically unnecessary services. We would be interested in receiving comments about this problem and possible solutions.

Also, we are proposing to revise § 412.42(c)(3)(iv) to allow the attending physician as well as the hospital or the beneficiary to appeal a PRO's decision on the validity of a hospital's finding that a beneficiary's stay is no longer covered care. This change would conform the regulations to the requirements of § 473.12(a)(1), in the PRO regulations that were published April 17, 1985 in the **Federal Register** (50 FR 15364).

We are proposing to make a technical change in §§ 412.42(d) (3) and (4) to indicate that validation of a hospital's findings regarding coverage are made by the intermediary and the PRO (to the extent that there is a medical component to the decision). Reference to the role of the PRO in this activity was inadvertently omitted from the regulations earlier.

3. *Admission Pattern Monitoring (§ 412.45).* Section 412.45 describes the method we use under the prospective payment system to monitor the pattern of admissions in a hospital by reviewing the hospital's discharge rate. We are proposing to delete this section from the regulations because our operating experience with this type of review has led us to begin developing admission pattern monitoring procedures that are more efficient and that use more current data than the data referred to in §412.45.

We are developing a system under which we would require the PRO to respond to admission pattern reports (which often are nearly nine months old) by explaining the basis for the variation using their review experience. If there is no reason for the variance, we would require that the PRO intensify its review of current cases to eliminate any inappropriate admissions. We believe that it is more appropriate to focus actual review efforts on current rather than past cases so that these efforts are expended to produce behavior changes.

Therefore, we propose to delete the detailed regulatory description of the activity so that our simplified and revised system, once developed and tested, can be implemented immediately. We note that § 412.44(a) contains a requirement for admissions pattern monitoring and our only objective in deleting §412.45 is to eliminate the regulatory requirements that deal with procedures and time frames for conducting this function.

D. Payment for Cost Outliers (§ 412.84)

Under the prospective payment system, an additional payment is made to hospitals for atypical cases known as "outliers." These are cases that have either an extremely long length of stay or extraordinarily high costs when compared to most discharges classified in the same DRG.

A day outlier case is a discharge in which the length of stay exceeds the geometric mean length of stay for discharges in the DRG by the lesser of a fixed number of days or a fixed number of standard deviations. A cost outlier case is a discharge that does not qualify as a day outlier case but in which covered charges adjusted to costs exceed the greater of a fixed dollar amount or a fixed multiple of the Federal prospective payment rate.

Currently, § 412.84 requires that, in the case of a cost outlier, the hospital must request medical review of all services furnished to the beneficiary. This

medical review is performed before the additional amount requested by the hospital can be paid. Of course, if the medical review determines that some of the services are noncovered, the charges for those services will not be considered in determining if the claim meets the cost outlier threshold or the outlier payment amount.

Our experience in this area has demonstrated that the medical review of cost outliers interferes with a hospital's cash flow and the denial rate is relatively low (currently, five percent on a national basis). Therefore, we believe that there is no longer a need to require medical review of these discharges on a prepayment basis. In addition, we believe that it is no longer necessary to review 100 percent of all hospital's cost outlier cases, even after payment is made.

We are proposing to revise § 412.84 to provide that medical review prior to payment of cost outliers would not be required. However, if the PRO finds that a hospital has a pattern of inappropriate billing, the PRO could review all cost outlier cases for these hospitals prior to payment. For cases in which payment is made for a cost outlier prior to medical review, the PRO would review a sample of these cases after payment. (Currently, we require a 50 percent sample on a national basis.) If the PRO determines that any services furnished in these cases are noncovered, the outlier payment for those services would be recovered from the hospital.

In addition to these changes, we would also revise § 412.84 to allow hospitals to request an outlier payment at the time they submit the bill for the discharge. Currently, hospitals cannot make this request until they receive the intermediary's determination of the prospective payment rate for the discharge. We are proposing this change because we believe that it is unfair to require hospitals to wait several weeks to receive cost outlier payments when they are reasonably sure that the claim meets the cost outlier threshold.

E. Referral Centers (§ 412.96)

In the August 31, 1984 final rule, we added an alternative set of criteria to § 412.96 (then § 405.476(g)) that expanded the definition of referral centers to encompass more rural hospitals. We also added a new paragraph to that section that provides for a triennial review of referral centers to determine if they continue to meet the criteria of a referral center. (See 49 FR 34740 for a detailed discussion of these revisions.)

One of the criteria that a hospital must meet is a case-mix index value that demonstrates the comparatively high degree of complexity of cases treated by the hospital. We selected this criterion because we believe that, in the case of rural hospitals, the complexity of cases treated in the facility is one of the principal characteristics that distinguishes between rural referral centers (that is, hospitals that offer a variety of specialized services and are comparable to urban acute care facilities) and typical rural hospitals. In the August 31, 1984 final rule, we set forth in § 412.96(c)(1) four different case-mix index value criteria, one of which a hospital must meet in order to qualify as a referral center for cost reporting periods beginning on or after October 1, 1984. These case-mix criteria are also one of the factors against which a referral center is judged during its triennial review.

We are proposing to update the case-mix index values effective October 1, 1985. These proposed values are updated using the most current data we have available on case-mix. We believe that it is necessary to update the case-mix index values not only to enable new hospitals to qualify as a referral center, but also to provide current criteria against which existing referral centers can be measured to determine if they continue to qualify for special treatment on the basis of their case-mix index.

We believe that the case-mix index criteria should be updated to reflect case-mix index increases that have occurred since the current criteria became effective. In addition, we believe that, rather than entering the actual criteria in regulations text, we should amend the regulations to describe our method for calculating and publishing the criteria. Therefore, we are proposing to revise § 412.96 so that it describes the process we would use to calculate the case-mix indexes and to provide that we will publish the updated case-mix index values in the annual notices of prospective payment rates.

We would determine a national average case-mix index value using claims data from the current fiscal year. Since we would have to calculate this value before the current fiscal year is over in order to include it in the annual proposed and final notices of prospective payment rates, we would be unable to include all the claims data from this year. However, in the proposed notice, we would include at least all data through the midpoint of the current fiscal year (March 31) and we would continue to include new data and make revisions up until publication of the final notice. We would compare the national average case-mix index value to our base year case-mix standard of 1.03. The percentage of change (increase or decrease) would be used to update the 1.03 standard for this year.

We would also update the regional median urban case-mix index values using the same methodology; that is, using the percentage of change to update the 1981 regional standards. The values (both national and regional) would be effective for cost reporting periods beginning on and after the same date the prospective payment rates are effective.

The criteria published for FY 1986 would be used to evaluate hospitals seeking to qualify as referral centers for cost reporting periods beginning during that Federal fiscal year. Thus, if a hospital with a cost reporting period beginning on December 1 and ending November 30 applies for referral center status beginning on December 1, 1985, its case-mix index value for the period December 1, 1984 through November 30, 1985 must meet one of the criteria published effective for October 1, 1985.

In addition, these case-mix criteria would be used during HCFA's triennial review to evaluate hospitals that are currently granted referral center status. As discussed in detail in the August 31, 1984 final rule (49 FR 34746), HCFA will review referral centers every three years to determine if they continue to meet the referral center criteria. A hospital that fails to continue to meet the criteria needed to qualify for referral center status in its first two years of participation will automatically be disqualified after the third year. In other situations, we will evaluate the hospital's performance during the third year in conjunction with experience in the first two years to determine if referral center status should be continued. Therefore, the case-mix index value of a hospital that is a referral center for its cost reporting period beginning in FY 1985 would have to meet the criteria effective on October 1, 1985 during its cost reporting period beginning on or after October 1, 1984 and before October 1, 1985 in order to retain its status. Thus, the case-mix index values and the time periods under review are the same for both hospitals seeking to qualify as referral centers and current referral centers.

Since section 1886(d)(5)(C)(i) of the Act requires that a hospital must submit its request for referral center status during the quarter preceding the start of its cost reporting period, we realize that complete data on a hospital's case-mix index for the current cost reporting period would not be available at the time a determination would be made. However, every effort would be made to include as many claims as possible and

we do not believe the missing data will be significant in most cases. To determine a hospital's case-mix index, we would accept only data maintained by HCFA's central office and, if necessary, data produced by a hospital's fiscal intermediary that is more current than the central office data. However, as noted in the August 31, 1984 final rule (49 FR 39743), we would not accept as a substitute case-mix data produced by the hospital or any outside organization.

We are proposing that to qualify as a referral center for cost reporting periods beginning on or after October 1, 1985, a hospital's case-mix index for its second year under the prospective payment system would have to be at least—

- 1.1172; or
- Equal to the median urban case-mix index values calculated by HCFA for the census region in which the hospital is located as indicated in the table below.

Region	Adjusted median urban case mix
1	1.1443
2	1.1616
3	1.1226
4	1.1345
5	1.0955
6	1.1085
7	1.0542
8	1.1454
9	1.1638

For both the national case mix and median urban values, we multiplied the 1981 standards as published in the August 31, 1984 final rule (49 FR 34741) by 9.6 percent. This figure represents the percentage by which the average case-mix index value has increased from 1981 through April 1985. The resulting figure was divided by 1.0105 to account for the reduction in the DRG relative weights for discharges occurring on or after October 1, 1984. (See the August 31, 1984 final rule (49 FR 34770) for a detailed discussion of this matter.) Thus, the proposed national case-mix criterion is computed as follows:

$$\frac{1.03 \times 1.096}{1.0105} = 1.1172$$

The same method was used to update the 1981 regional median urban case-mix index values.

We are also proposing to revise § 412.96(c)(2) to specify that we would publish the criteria for the number of discharges in each year's annual notice of prospective payment rates. Thus, we would be using the same process for discharges as we would for case mix. However, we are not proposing to update the number of discharges criteria for FY 1986 because current data are not available on total inpatient discharges for individual hospitals. Therefore, the criteria published in the August 31, 1984 final rule (49 FR 34741) would be used for FY 1986.

In addition, we are proposing to revise the title of § 412.96(b) to correct an inadvertent error that occurred when the regulation was recodified in the March 29, 1985 final rule. The current title indicates that the criteria set forth in paragraph (b) apply only for cost reporting periods beginning before October 1, 1984. We never intended that these criteria be limited to a particular time period. Therefore, we would revise the title to indicate that these cirteria apply for cost reporting periods that began on or after October 1, 1983 or in the future. We are also making a technical change to § 412.96(f) to clarify the provisions of that paragraph.

F. Indirect Medical Education (§ 412.118)

Section 1886(d)(5)(B) of the Act provides that hospitals subject to the prospective payment system receive an additional payment for the indirect costs of medical education. The amount of this payment is based on a hospital's ratio of full-time equivalent interns and residents to bed size. The regulations governing this provision are found at § 412.118.

In our August 31, 1984 final rule, we revised § 412.118 (then § 405.477) based on the amendment made to section 1886(d)(5)(B) of the Act by section 2307(b) of Pub. L. 98–369. The amendment requires that, in determining the additional payment amount for indirect medical education, we must count interns and residents on the basis of where they furnish services, regardless of which entity (for example, hospital, university, or medical school) employs them. However, no intern or resident is counted as more than one full-time employee for any cost reporting period. (See the August 31, 1984 final rule for a detailed discussion of this revision (49 FR 34747).)

We are proposing to revise § 412.118 to change the way interns and residents are counted for purposes of making payment for indirect medical education costs effective with cost reporting periods beginning on or after October 1, 1984. Currently, § 412.118(e) provides that interns and residents must work 35 hours or more per week to be counted as one full-time employee. All interns and residents who do not meet this criterion are counted as one-half of a full-time employee. At present, we determine the additional payment amount based on the number of interns and residents employed during the last week of a hospital's cost reporting period. Therefore, if an intern or resident works for a hospital at least 35 hours per week for only a few weeks at the end of its cost reporting period, that individual is counted as a full-time employee.

Section 412.118(d)(2) currently requires that hospitals must submit a quarterly report to their fiscal intermediaries that includes, among other information, the actual hours worked by each intern and resident during each month. Since we published these criteria in the August 31, 1984 final rule, we have received numerous comments from hospitals that indicate that their recordkeeping capability does not allow them to determine the "acutal hours" worked by interns and residents at their facilities.

We believe that the 35-hour threshold is not reflective of the normal work week of interns and residents. Furthermore, the use of hours as a measure of intern or resident time requires substantial recordkeeping, and, if interns and residents rotate among several hospitals, a method of apportionment that is not necessarily consistent with reporting and counting for an institution's or program's scheduling purposes.

It is our understanding that nearly all intern and resident programs schedule an intern or resident at one hospital for a period of time, usually whole months, rather than splitting an individual intern's or resident's day or week among several hospitals. Moreover, it appears that most hospitals attempt to maintain fairly even staffing levels of interns and residents over the course of the graduate medical academic year.

Based on the assumption that intern and resident levels are basically constant over the July through June graduate medical education year, we propose that interns and residents be counted on a single day. This method should avoid the potential for overcounting since, except in rare instances, on any given day an intern or resident is not assigned to more than one hospital.

We are proposing that the additional payment for indirect medical education costs for a hospital cost reporting period would be based on the number of interns and residents assigned to the hospital on September 1 during the hospital's cost reporting period. Thus, we would be replacing our current requirement for quarterly reports with

one for an annual report covering only one day of the year.

We are proposing that this method of counting interns and residents on September 1 each year be retroactively applied to all hospital cost reporting periods beginning on or after October 1, 1984. That is the date on which we implemented the system of reporting quarterly on intern and resident time. We believe that our proposed method is far superior to the current method, and because it is far less cumbersome for both hospitals and the intermediaries, we believe that it should replace the current system entirely.

We believe that a count on September 1 would be reflective of intern and resident assignments throughout an academic year (generally July 1 through June 30) and would be the basis for the indirect medical education additional payment for the academic year beginning the previous July. We are not aware of any intern and resident programs that do not conform to this timeframe. However, we are specifically soliciting comments from representatives of any medical education programs with academic years other than July 1 to June 30 as to what impact the September 1 date would have upon their hospitals.

For hospitals with cost reporting periods beginning on July 1, the same date that their graduate medical education programs begin, there would be a relatively stable number of interns and residents throughout the cost reporting period. However, in any other hospital, the cost reporting period would span more than one academic year. Thus, there could be significant fluctuation between the two years in the number of interns and residents to be counted. This fluctuation could result from the addition or deletion of programs or an unusually high or low number or resignations from programs during a particular academic year. In these cases, we would apportion the intern and resident count between the two periods based on counts of two consecutive September 1 dates to minimize the possibility of incorrect levels of payment.

For example, a teaching hospital has a cost reporting period from January 1 through December 31, 1986. For purposes of counting interns and residents, the assigned count on September 1, 1985 would apply to half the cost reporting period (discharges occurring from January 1 through June 30, 1986), since it falls within that academic year. The count taken on September 1, 1986 would apply to discharges occurring from July 1 through December 31, 1986 (the remaining half of the cost reporting period), since it falls within the subsequent academic year. Accordingly, in determining the intern and resident count that would be used in determining the additional payment for indirect medical education for the cost reporting period January 1 through December 31, 1986, we would use a weighted average. If there are 10 interns and residents assigned on September 1, 1985 and 12 on September 1, 1986, the count that would be used for the entire cost reporting period would be 11 as calculated below:

$$\left(\frac{6}{12}\times 10\right)+\left(\frac{6}{12}\times 12\right)=11$$

Another example is a hospital with a cost reporting period from August 1, 1985 through July 31, 1986. If the intern and resident count on September 1, 1985 is 240 and on Sepetember 1, 1986 is 180, then its count would be calculated as follows:

$$\left(\frac{11}{12}\times 240\right)+\left(\frac{1}{12}\times 180\right)=235$$ interns and residents for the cost reporting period.

Prior to October 1, 1984, hospitals were not required to keep schedules of assigned time or logs of actual time on which to base the intern and resident count. While we believe that most teaching hospitals do have these records, there may be some that do not. Therefore, for cost reporting periods beginning on or after October 1, 1984 and before July 1, 1985, we propose to use April 15, 1985 instead of September 1, 1984 as the uniform reporting date. Since we issued the August 31, 1984 final rule to include this count effective for cost reporting periods on or after October 1, 1984, we believe that these hospitals woud have been keeping the necessary records by April 15, 1985. In subsequent years, all hospitals would use the September 1 date. An example of such a hospital follows: Hospital B has a cost reporting period from January 1 through December 31, 1985. Hospital B has a count of 20 interns and residents on April 15, 1985 and 24 on September 1, 1985. The Count for the cost reporting period is calculated as follows:

$$\left(\frac{6}{12}\times 20\right)+\left(\frac{6}{12}\times 24\right)=22$$

We believe that this proposed policy would result in levels of payment at final settlement that are reflective of the actual intensity of teaching activity during the portion of the cost reporting period that falls within a particular academic year.

Before selecting this method for reporting the intern and resident count, we considered various alternatives. Other considered methods involved counting actual hours worked, scheduled hours worked, person-months, person-weeks, or some other assigned-time basis. These alternative measures all required sophisticated recordkeeping and, in some instances, substantial programming and administrative costs. We believe that the results of these intensive measurements may not be substantially more precise than the single-day concept. Furthermore, we understand that the American Medical Association and the Association of American Medical Colleges use the September 1 date for their data collection purposes. Therefore, we would not be requiring any new data collection by teaching hospitals.

Many interns and residents are assigned to freestanding family practice centers, hospital outpatient departments, and excluded units, such as psychiatric units. Currently, time spent in freestanding family practice centers and excluded units is not counted for purposes of the indirect medical education payment since these settings are not subject to the prospective payment system. Although we are currently counting time spent in outpatient departments, we are proposing that time spent in these departments would not be counted for purposes of the indirect medical education payment because outpatient departments also are not subject to the prospective payment system.

Interns and residents assigned to excluded areas of the hospital would be counted based on where they are assigned on September 1. Thus, an intern or resident who is assigned to an excluded area on September 1 would not be counted for the indirect medical education payment. However, if an intern or resident is dividing his or her time between these areas and the areas or units of a hospital subject to the prospective payment system, the hospital would have to report to its intermediary the proportion of time spent in or assigned to both the included and excluded areas. Interns and residents in these cases are the only individuals that would be counted as other than one full-time employee and the indirect medical education payment would be computed based on the proportion of time assigned to the areas

of the hospital subject to the prospective payment system.

Instead of requiring hospitals to keep records on number of hours worked, we would instead require them to keep records on assignment of interns and residents by specialty. To the extent that hospitals operate intern and resident programs in certain specialties, we would want to be able to verify that the assignment of interns and residents on September 1 (and during the rest of the year) reflects the hospital's actual circumstances. For example, we would consider it unusual for a hospital to operate a psychiatry residency program and not have any interns or residents assigned to the excluded psychiatric unit.

The additional payment for the indirect medical education costs is computed on the basis of the ratio of interns and residents to hospital bed size. Currently, for determining the intern and resident to bed ratio, as well as for classification purposes, a hospital's bed size has been determined based upon the total number of beds available on the first day of the pertinent cost reporting period. Since a hospital's bed size may increase or decrease, sometimes substantially, over the course of a cost reporting period, we are proposing to base the number of beds on the number of available bed days (excluding beds assigned to newborns and excluded units) during the current cost reporting period divided by the number of days in the cost reporting period. This change would also be effective with cost reporting periods beginning on or after October 1, 1984.

We believe that a hospital's assignment of interns and residents on one day (September 1) would generally be representative of the academic year as a whole. However, it may be necessary at settlement for intermediaries to audit hospital records to verify the documentation of the September 1 assignments as reported to us and to verify that the September 1 count is representative of the count over the entire cost reporting period. This documentation may include residency program assignment schedules, intern and resident contracts, and payroll records. The hospital could submit more comprehensive data, but, as in all other cases, it must furnish verfiable documentation in support of its claim for payment. The intermediaries would match the data to ascertain that no intern or resident is counted more than once. Based on its review of the hospital's documentation, the intermediary may adjust the intern and resident to bed ratio for purposes of the final indirect medical education payment.

G. Transfer Policy (§ 412.4)

Our current policy concerning transfers between prospective payment hospitals provides for transfering hospitals to receive payment on a per diem basis. The discharging hospital receives the full DRG payment. Transferring hospitals may also receive an additional payment for extraordinarily high-cost cases that meet the cost outlier criteria in §§ 412.80 and 412.84; they are not eligible for day outlier payments.

As we have stated in previous prospective payment documents (most recently in the August 31, 1984 final rule (49 FR 34730)), our ultimate goal is to make one payment for the entire course of treatment. Because of the complexities of this issue, we are not proposing any changes in the regulations that would implement a new transfer policy at this time. However, we want to note that we are continuing to study this problem and to collect relevant data so that we can implement a single payment for transfers in the future.

V. Other ProPAC Recommendations

As required by law, we have reviewed the April 1, 1985 report submitted by ProPAC and have given its recommendations careful consideration in conjunction with the formulation of the proposals set forth in this document. The recommendations are discussed throughout this preamble and in the addendum to this proposed rule along with our proposals concerning the same issues. The remainder of the recommendations are discussed below.

A. Hospital Market Basket (Recommendations 2, 4 through 6, and 9)

The hospital market basket represents the most significant component in the update factor used to determine the prospective payment rates. ProPAC devoted considerable attention to this area and made eight specific recommendations. Recommendation 3 concerning the market basket for excluded hospitals is discussed in section III. of the addendum. Recommendations 7 and 8 concerning forecast errors are discussed in section II.A.3 of the addendum to this document.

1. *The Number of Market Baskets (Recommendation 2).* For FY 1986, ProPAC recommends using a single market basket for prospective payment system hospitals. However, it plans to study the appropriateness of developing multiple market baskets by region and class of hospital.

We believe that this is an area that warrants further study and we support ProPAC's research. In the past, we have studied variations in regional market baskets and we plan to continue our research concerning multiple market baskets by region and class of hospital.

2. *Market Basket Wage Component—Occupational Groups (Recommendation 4).* Wages are the largest single component of the hospital market basket, accounting for nearly 60 percent of hospital expenses. Currently, we measure changes in all hospital wages by the Average Hourly Earnings (AHE) in the hospital industry, a data series collected by the BLS. This series does not separate changes in inflation from changes in the skill mix of workers in the hospital industry. As a result, ProPAC suggests that some portion of the growth in the series over time has probably been due to shifts in the type and use of hospital employees (for example, substitution of registered nurses for licensed practical nurses).

ProPAC recommends that separate wage categories by occupational groups should be created to take into account the broad changes in skill mix among managers, professionals, and other hospital workers. ProPAC suggests that changes in wages for these categories should be measured using a combination of internal and external proxy measures as follows:

- Managers and Administrators: The Employment Cost Index (ECI) for Managers and Administrators.
- Professionals and Technicians: A 50–50 blend of the AHE for the hospital industry and the ECI for Professional and Technicians.
- Other Hospital Workers: A 50–50 blend of the AHE for the hospital industry and the ECI for all private industry.

The issue of whether to use only internal proxies as we do in formulating the current single wage component or a combination of internal and external (that is, hospital and nonhospital) proxy measures as ProPAC recommends has been debated for some time. We have opted to use internal proxies, since that position is consistent with our treatment of the wage index, which is also based on internal wage measures. Moreover, as ProPAC notes, the various external measures that might be used (including the ECI) also have certain drawbacks that we believe warrant further examination. We are studying this issue further and plan to develop various market basket models using internal and external proxies, as well as weighted occupational categories, for further consideration.

3. *Employment Cost Index Feasibility Study (Recommendation 5).* ProPAC recommended that the Secretary should work with BLS to study the advantages and feasibility of developing an ECI for the hospital industry that includes both public and private hospitals and covers increases in both wages and fringe benefits.

The basic difference between an ECI and the AHE we currently use to measure increases in hospital workers' salaries is that the ECI controls for occupational mix. Therefore, the ECI would maintain the relative hospital worker skill mix constant over time and would preclude skill mix from affecting the amount of the increase in the hospital wage measure. We agree that this is an area that warrants further study and we plan to examine the merits of establishing an ECI for hospital workers as part of our ongoing analysis of the market basket.

4. *Study Effects of Changes in the Minimum Wage Law on Hospital Workers (Recommendation 6).* ProPAC plans to study the extent to which hospital workers would be affected by changes in the Federal minimum wage law. The intent of the study is to detect whether, under the prospective payment system, workers who earn more than the minimum wages are differently affected by statutory increases in the minimum wage compared with workers in other industries.

Since it is our desire that the prospective payment system be equitable, we would certainly want to know about any dimension of the system that is found to be unfair. The ProPAC's study results indicate that under this system hospital workers are, in fact, differently affected by changes in the minimum wage laws, we would certainly be interested in any recommendations ProPAC can make concerning corrective action.

5. *Rebasing of Market Basket Weights (Recommendation 9).* ProPAC suggests that the market basket weights should be rebased at least every five years or more frequently if significant changes in the weights occur. We agree that it is appropriate to periodically rebase the market basket weights in order to reflect more current data, especially if significant changes in the mix of inputs used by hospitals occur. We are currently in the process of developing rebased market basket weights. We also recognize that the market basket weights may require further revision to account for payment changes that might occur if additional costs, such as capital-related costs, are included in the prospective payment system.

B. Hospital Labor Market Areas—Area Wage Index: Improvement of Labor Market Area Definitions (Recommendation 13)

The current area wage index used to adjust payments for interarea wage differences does not distinguish separate labor markets within MSAs. ProPAC has recommended that the prospective payment rates be adjusted to take into account variations in wages paid within a metropolitan area and in different rural locations within a State. ProPAC notes that several studies have shown that there is substantial variation in the wages paid in the inner city as compared with suburban areas (that is, "core" areas and "ring" areas) within the same MSA and that similar concern has been expressed regarding rural areas within a State. ProPAC observes that some have contended that hospitals in the inner city often must pay premium wages to attract skilled employees and that higher skill levels may be needed in these hospitals to support greater levels of teaching activity. However, it also notes that it has been suggested that inefficiency may also contribute to the higher wage levels in inner city hospitals.

ProPAC recommends that these differences in hospital labor markets be reflected in the application of the area wage index used to adjust the prospective payment rates for actual variation in area wage levels. While ProPAC recommends that labor market area definitions be improved to better reflect hospital labor market areas, the report does not discuss how specific alternatives to the current MSA/non-MSA definitions might be established.

We have previously acknowledged in various **Federal Register** documents that the current MSA/non-MSA definitions may not adequately recognize widely varying hospital labor market conditions, especially among counties classified as rural. We have been looking into possible alternative classification systems that would better define hospital labor markets. The core-ring concept for splitting MSAs that is addressed in ProPAC's recommendation is one alternative that we have previously considered (see the January 3, 1984 final rule (49 FR 254)). In addition, we are studying other classification systems such as the Department of Commerce's Bureau of Economic Analysis economic areas that are defined based on area ties to economic centers.

However, we believe that extensive research and study will be required before alternative labor market definitions are adopted. As with any classification system in which boundaries must be established, it is impossible to designate boundaries that will be completely satisfactory to all concerned. Therefore, we must be certain that any new classification system is based on objective criteria that will provide more equitable labor market area definitions than the current MSA/non-MSA classifications.

C. Hospitals Serving Disproportionate Shares of Low Income or Medicare Patients (Recommendations 14 and 15)

ProPAC recommends that an adjustment be established for FY 1986 rates for hospitals that serve a disproportionate share of low income or Medicare patients or both and that a definition of these hospitals be established based on a broader concept of low income than simply percentage of Medicaid patients.

As required by section 2315(h) of Pub. L. 98-369, we have been working on the development of the definition. However, our research efforts have been hampered by the lack of data of sufficient quality to permit us to develop a definition with any degrees of confidence.

The source of data used to identify hospitals Medicare costs is the Medicare cost report, which is completed annually by each hospital participating in the Medicare program. The Medicare cost report does not, however, include any information on the income distribution of the hospital's patient population. There is space on the cost report for Medicaid utilization and cost information that would permit computation of the hospital's share of Medicaid discharges, a measure which might be used as a proxy for the percentage of discharges attributable to low income patients. Unfortunately, Medicaid information is frequently missing from the cost reports since it has no bearing on Medicare payments. Moreover, because the Medicare program is prohibited from paying for bad debts other than those specifically attributable to our beneficiaries, data on the hospital's overall bad debt picture is not available as an alternative proxy for low income. (Bad debt would itself be a highly questionable measure since it may reflect idiosyncratic hospital charging and collection procedures as well as patient inability to pay. Moreover, it would not be specifically linked to patient income.)

In light of these deficiencies, we have had to turn to other sources of data. The only national source of data on hospital-specific Medicaid and Medicare utilization available to us at this time is

a survey of 5,323 hospitals conducted by the Department's Office of Civil Rights (OCR). However, because the survey was limited to a two-week period during January 1981, was not designed for payment purposes, and was incomplete for many hospitals, its results may not be a satisfactory basis for determining Medicaid utilization for purposes of a disproportionate share analysis. Several hospitals known to treat large numbers of Medicaid patients failed to be identified as such or reported no Medicaid admissions. Other hospitals, known to furnish extensive charity care, appeared to have average or below-average Medicaid and Medicare utilization.

These aberrations cast doubt not only on the reliability of the OCR data but also on the validity of Medicaid utilization as a proxy for low income. It should be noted that state-by-state variation in Medicaid eligibility, as well as amount, duration and scope of benefits, means that an adjustment based on percent of Medicaid patients may simply reward hospitals in those States that have more generous Medicaid programs, hence, higher shares of Medicaid recipients.

We have also reviewed studies from the American Hospital Association (AHA), the District of Columbia (D.C.) Hospital Association, and the Congressional Budget Office. The AHA used data from approximately 2,500 hospitals because many of its own hospitals do not report charity or bad debt information on the AHA survey form. Therefore, this data base is incomplete. In addition, we have not been able to replicate the study because, for reasons of confidentiality, the AHA does not routinely provide the data to outside organizations or to the Federal government.

The D.C. Hospital Association study used data from only 260 hospitals in five metropolitan areas. We believe that such a limited study is inappropriate as the basis for establishing policy on a national basis. In addition, because the data used for average Medicare allowable cost per case, for the percentage of Medicare or Medicaid patients, and for hospital bed size was not available to us, we could not make a reasonable comparison of the D.C. Hospital Association and our data. There were also a number of technical differences between the statistical measures used in the Association's study and our research that precluded direct comparison of the findings.

Currently, we are reviewing a Senate Finance Committee staff proposal to use Medicare patient origin data and census data on the aged with incomes below the poverty level to assess the impact of low-income Medicare patients on hospital costs. We have found preliminary evidence that the percent of Medicaid admissions relates positively to Medicare costs per Medicare case. The "percent of Medicaid admissions" variable, however, comes from the Office of Civil Rights survey discussed above. Although we are concerned that Medicaid population may not be a reliable proxy for low-income, we also are investigating alternative sources of a "percent Medicaid" measure that will be more reliable than the OCR data previously referenced.

In addition, we are attempting to obtain AHA survey data on hospital revenues by sources of funds, bad debts, and charitable care allowances. These data should be more current and might furnish a more direct measure of a hospital's share of low income patients, thus avoiding the inadequacies of the current proxy measures. Once we obtain accurate data, we will be able to turn our attention to analyzing if, in fact, hospitals serving a significantly disproportionate number of low income or Part A Medicare patients experience higher Medicare costs per case due to the provision of care to these patients or if these additional costs are accounted for by severity, inefficiency, or other factors. We will then determine if these costs are already appropriately recognized in the prospective payment system or if additional payment adjustments should be made.

VI. Summary of Proposed Changes to Regulations

For the convenience of the reader, we are summarizing the changes we are proposing to the regulations. The reader is referred to the detailed discussions above for an explanation of the rationale for these changes.

A. Rate of Increase Limits

We are proposing to revise § 405.463 to—

- Provide that the applicable target rate percentage would be the prospectively determined percentage, published by HCFA, based on the estimated market basket index for the calendar year adjusted by other factors as determined by the Secretary; and
- Delete the October 1, 1985 expiration date for the exemption from the rate of increase limit that is available to new hospitals.

B. Changes in the DRG Classification System

We would add a new § 412.10 that describes the procedures we would use to revise the DRG classification system both at the time of the annual prospective payment rate update notice and during the Federal fiscal year.

C. Exclusion of Alcohol/Drug Hospitals and Units

In §§ 412.23(c) and 412.32, we are proposing to change the expiration date of the exclusion for alcohol/drug hospitals and units from October 1, 1985 to the end of the hospital's cost reporting period beginning before October 1, 1985.

D. Review Activities

We are proposing to make changes in Subparts C and F of Part 412 to replace all references to PSROs and medical review entities with references to PROs since the PROs are now fully operational. In addition, we would delete § 412.45, which describes how we monitor discharge rates under the prospective payment system.

E. Charges to Beneficiaries

We are proposing to add a new §405.308 that would allow hospitals excluded from the prospective payment system because of their participation in a State cost control system or demonstration project to charge beneficiaries for custodial or medically unnecessary care after issuing the proper notices that are currently required in § 412.24(c) for prospective payment hospitals.

F. Payment for Cost Outliers

We are proposing to revise § 412.84 to delete the requirement that all cost outlier cases must be reviewed by the PRO before payment. However, these cases could be subject to prepayment review if the hospital demonstrates a pattern of inappropriate billing. The PRO would also review a sample of the claims that were not reviewed prior to payment. If, as a result of its postpayment review, the PRO determines that any services were noncovered, the outlier payment would be recovered from the hospital. We would also revise § 412.84 to allow hospitals to request cost outlier payment at the time they submit bills for payment, rather than waiting until after the intermediary has notified them of its determination on payment for the discharge.

G. Referral Centers

We would revise § 412.96 as follows:

- The title of paragraph (b) would be changed to indicate that this paragraph is effective for cost reporting periods beginning on or after October 1, 1983.

• Paragraphs (c)(1) and (c)(2) would be revised to provide that the criteria related to case-mix index and discharges for referral centers would be published in the proposed and final annual prospective payment rate notices.

• We would add a new paragraph to describe the method we would use to calculate updated case-mix indexes each year.

H. Indirect Medical Education

We are proposing to revise § 412.118 effective for cost reporting periods beginning on or after October 1, 1984 as follows:

• Change the method used to determine the number of beds in a hospital for purposes of counting interns and residents.

• Delete the requirement of a quarterly report from hospitals on numbers of interns and residents and replace it with an annual report that counts by specialty the number of interns and residents on September 1 (with an additional count on April 15, 1985 for hospitals with cost reporting periods beginning on or after October 1, 1984 and before July 1, 1985).

• Delete the requirement of counting hours of interns and residents to determine full-time equivalents. Instead, all interns and residents assigned to the hospital on September 1 (or April 15, 1985, if applicable) would be counted as full-time except for those individuals splitting their time among one or more areas excluded from the prospective payment system.

• Provide for intermediary review of hospital documentation to verify the hospital's intern and resident to bed ratio.

VII. Other Required Information

A. Responses to Public Comments

Because of the large number of pieces of correspondence we normally receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in developing the final rule, we will consider all comments that are received by the end of the comment period and will respond to them in the preamble to that rule.

B. Paperwork Reduction Act

Section 412.118 contains an information collection requirement that is subject to review by the Executive Office of Management and Budget (EOMB) under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511). We have submitted a copy of these requirements to EOMB for its review.

In the January 3, 1984 issue of the **Federal Register** (49 FR 312), we indicated that we intended to seek EOMB approval of the information collection requirements in § 405.471(c)(4)(ii) and (c)(4)(iii)(C) (incorrectly designated as § 405.471(c)(3)(ii) and (c)(3)(iii)(C) and since recodified at §§ 412.27 and 412.29(c), respectively). The information collection requirements in § 412.27 are approved by EOMB under control number 0938–0328. Section 412.29(c) does not contain information collection requirements. Consequently, EOMB approval is not required for this section.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 412

Cancer hospitals, Christian Science Sanatoria, Discharges and transfers, Inpatient hospital services, Medicare, Outlier cases, Prospective payment, Referral centers, Renal transplantation centers, Sole community hospitals.

C. Impact Analyses

Appendix A, which is printed immediately following the addendum to this proposed rule, sets forth our analyses of the projected impact and effect on small businesses of the proposals that are set forth in this document.

42 CFR Chapter IV, Subchapter B would be amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES SUBCHAPTER B—MEDICARE PROGRAMS

I. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Subpart C is amended as follows:

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

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

Authority: Secs. 1102, 1154(a)(2)(B), 1815, 1833, 1842, 1862, 1866, 1870, 1871, and 1879, Social Security Act (42 U.S.C. 1302, 1302c-3(a)(2)(B), 1395g, 1395l, 1395u, 1395y, 1395cc, 1395gg, 1395hh, 1395pp), and 31 U.S.C. 3711.

2. The table of contents of Subpart C is amended by adding the title of a new § 405.308 to read as follows:

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

* * * * *

Sec.
405.308 Limitations on charges to beneficiaries.

* * * * *

3. A new § 405.308 is added to read as follows:

§ 405.308 Limitation on charges to beneficiaries.

(a) *Prospective payment hospitals.* A hospital receiving payment under the prospective payment system for a covered hospital stay may charge a beneficiary for items and services excluded from coverage only as described in § 412.42 of this chapter.

(b) *Hospitals participating in State cost control systems or demonstration projects.* A hospital receiving payment for a covered hospital stay under a State cost control system approved under 1886(c) of the Act or in a demonstration project authorized under section 402(a) of Pub. L. 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Pub. L. 92–603 (42 U.S.C. 1395b–1 (note)) may charge a beneficiary for noncovered services as follows:

(1) For the custodial care and medically unnecessary services described in § 412.42(c) of this chapter, after the conditions of § 412.42 (c)(1) through (c)(4) are met; and.

(2) For all other services in accordance with the applicable rules described in Part 489 of this chapter.

B. Subpart D is amended as follows:

Subpart D—Principles of Reimbursement for Providers, Outpatient Maintenance Dialysis, and Services by Hospital Based Physicians

1. The authority citation for Subpart D continues to read 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. Section 405.463 is amended by revising paragraphs (c)(3)(i) and (f)(1) to read as follows:

§ 405.463 Ceiling on rate of hospital cost increases.

* * * * *

(c) *Procedure for establishing the ceiling (target amount).* * * *

(3) *Target rate percentage.* (i) The applicable target rate percentage will be the prospectively determined percentage, published by HCFA, based on the estimated increase in the market basket index for the calendar year adjusted by other factors as determined by the Secretary.

* * * * *

(f) *Exemptions*—(1) *New hospitals.* New hospitals that receive approval from HCFA are exempt from the rate of increase ceiling imposed under this section. For purposes of this section, a new hospital is a provider of inpatient hospital services that has operated as the type of hospital for which HCFA granted it approval to participate in the Medicare program, under present and previous ownership, for less than three full years. This exemption expires at the end of the first cost reporting period beginning at least two years after the hospital accepts its first patient.

* * * * *

II. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES.

A. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395hh, 1395ww).

B. The table of contents of part 412 is amended by adding the title of a new § 412.10 to Subpart A and removing the title of § 412.45 from Subpart C to read as follows:

Subpart A—General Provisions

Sec.

* * * * *

412.10 Changes in the DRG classification system.

* * * * *

C. A new § 412.10 is added to Subpart A to read as follows:

Subpart A—General Provisions

* * * * *

§ 412.10 Changes in the DRG classification system.

(a) *General rule.* Except as specified in paragraph (b) of this section, HCFA issues changes to the DRG classification system in the annual notice of prospective rates published in accordance with § 412.8(b). The DRG changes will be effective with discharges occurring on or after the same date the payment rates are effective.

(b) *Interim changes in the DRG classification system.* HCFA may find it necessary to make changes to the DRG classification system during the Federal fiscal year. These changes are limited to those that meet the criteria in paragraph (c) of this section and that need to be made in order to—

(1) Incorporate into the prospective payment system new items and services that become covered under Medicare; or

(2) Correct a serious omission or inequity in the DRG classification system.

(c) *Criteria for interim changes.* HCFA makes interim changes to the DRG classification system as described in paragraph (b)(2) of this section only if failure to make the changes would have—

(1) A potential adverse impact on the health and safety of beneficiaries; or

(2) A significant and unwarranted fiscal impact on hospitals or the Medicare program.

(d) *Publication of interim changes.* For changes that are made during the Federal fiscal year under paragraphs (b) and (c) of this section, HCFA—

(1) Issues the change through its administrative issuance system and makes the change effective as soon as is administratively feasible; and

(2) Publishes the change for public comment in the next annual notice of prospective payment rates in accordance with § 412.8(b)(2).

(e) *Basis for changes in the DRG classification system.* All changes in the DRG classification system are made using the principles established for the DRG system. This means that cases are classified so each DRG is—

(1) Clinically coherent; and

(2) Embraces an acceptable range of resource consumption.

D. Supbart B is amended as follows:

Subpart B—Hospital Services Subject to and Excluded from the Prospective Payment System

1. In § 412.23, the introductory text in paragraph (c) is revised to read as follows:

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(c) *Alcohol/drug hospitals.* An alcohol/drug hospital is excluded from the prospective payment system for cost reporting periods beginning before October 1, 1985, if it meets the following requirements:

* * * * *

2. In § 412.32, the introductory text is revised to read as follows:

§ 412.32 Distinct part alcohol/drug units: Additional requirements.

In order to be excluded from the prospective payment system for cost reporting periods beginning before October 1, 1985, a distinct part alcohol/drug unit must meet the following requirements:

* * * * *

E. Subpart C is amended as follows:

Subpart C—Conditions for Payment Under the Prospective Payment System

1. In Subpart C, all occurrences of the phrase "medical review entity" are revised to read "PRO".

2. In § 412.42, paragraphs (c)(2), (c)(3)(iv), (d)(3), and (d)(4) are revised to read as follows:

§ 412.42 Limitations on charges to beneficiaries.

* * * * *

(c) *Custodial care and medically unnecessary inpatient hospital care.* * * *

(2) The attending physician agrees with the hospital's determination in writing (for example, by issuing a written discharge order). If the hospital believes that the beneficiary does not require inpatient hospital care but is unable to obtain the agreement of the physician, it may request an immediate review of the case by the PRO. Concurrence by the PRO in the hospital's determination will serve in lieu of the physician's agreement.

(3) * * *

(iv) The determination of the PRO made after the beneficiary received the purportedly noncovered services will be appealable by the hospital, the attending physician, or the beneficiary under the appeals procedures that apply to PRO determinations affecting Medicare Part A payment; and

* * * * *

(d) *Medically unnecessary diagnostic and therapeutic services.* * * *

(3) If the beneficiary receives the services, a formal determination on the validity of the hospital's finding is made by the intermediary and, to the extent that the decision requires the exercise of medical judgment, the PRO.

(4) The determination is appealable by the hospital, the attending physician, or the beneficiary under the appeals procedure that applies to determinations affecting Medicare Part A payment.

* * * * *

3. In § 412.44, the introductory text is revised to read as follows:

§ 412.44 Medical review requirements: Admissions and quality review.

Beginning on November 15, 1984, a hospital must have an agreement with a PRO to have the PRO review, on an ongoing basis, the following:

* * * * *

§ 412.45 [Removed]

4. Section 412.45 is removed.

5. Section 412.48(b) is revised to read as follows:

§ 412.48 Denial of payment as a result of admissions and quality review.

* * * * *

(b) When payment with respect to admission of an individual patient is denied by a PRO under paragraph (a)(1) of this section, and liability is not waived in accordance with §§ 405.330 through 405.332 of this chapter, notice and appeals are provided under procedures established by HCFA to implement the provisions of section 1155 of the Act, Right to Hearing and Judicial Review.

* * * * *

F. Subpart F is amended as follows:

Subpart F—Payment for Outlier Cases

1. In § 412.82, the introductory text of paragraph (b) is revised to read as follows:

§ 412.82 Payment for extended length of stay cases (day outliers).

* * * * *

(b) The PRO must review and approve to the extent required by HCFA—

* * * * *

2. Section 412.84 is amended by revising paragraph (b); adding new paragraphs (c), (d), and (e); redesignating current paragraphs (c), (d), (e), and (f) as paragraphs (f), (g), (h), and (i) respectively; revising the introductory language of newly redesignated paragraph (f); and by revising newly redesignated paragraph (i) to read as follows:

§ 412.84 Payment for extraordinarily high cost cases (cost outliers).

* * * * *

(b) The hospital must request additional payment—

(1) With initial submission of the bill; or

(2) Within 60 days of receipt of the intermediary's initial determination.

(c) Except as specified in paragraph (e) of this section, an additional payment for a cost outlier case is made prior to medical review.

(d) As described in paragraph (f) of this section, the PRO reviews a sample of cost outlier cases after payment. The charges for any services identified as noncovered through this review will be denied and any outlier payment made for these services will be recovered.

(e) If the PRO finds a pattern of inappropriate billing by a hospital, all cost outlier cases from that hospital may be subject to medical review prior to payment until the PRO determines that appropriate corrective actions have been taken.

(f) The PRO reviews the cost outlier cases, using the medical records and itemized charges, to verify the following:

* * * * *

(i) The additional payment amount will be derived by first taking 60 percent of the difference between the hospital's adjusted cost for the discharge (as determined under paragraph (g) of this section) and the threshold criteria established under § 412.80(a)(2). The resulting amount will then be multiplied by the applicable Federal portion of the blend as indicated in § 412.82(c).

G. In Subpart G, § 412.96 is amended by revising the title of paragraph (b), the title and the introductory text of paragraph (c), and paragraphs (c)(1), (c)(2), and (f), and adding a new paragraph (g) to read as follows:

Subpart G—Special Treatment of Certain Facilities

* * * * *

§ 412.96 Special treatment: Referral centers.

* * * * *

(b) *Criteria for cost reporting periods beginning on or after October 1, 1983.*

* * * * *

(c) *Alternative criteria for cost reporting periods beginning on or after October 1, 1985.* For cost reporting periods beginning on or after October 1, 1985, a hospital that does not meet the criteria of paragraph (b) of this section is classified as a referral center if it is located on a rural area (as defined in § 412.62(f)) and meets the criteria specified in paragraphs (c)(1) and (c)(2) of this section and at least one of the three criteria specified in paragraphs (c)(3), (c)(4), and (c)(5) of this section.

(1) *Case-mix index.* The hospital's case-mix index for the cost reporting period prior to the one for which the hospital is seeking referral center status must meet one of two criteria relating to the level of the case mix as described in each year's annual notice of prospective payment rates published under § 412.8(b). The methodology HCFA uses to calculate these criteria is described in paragraph (g) of this section.

(2) *Number of discharges.* For the hospital's most recently completed cost reporting period, its number of discharges (excluding discharges from subprovider and newborn units) is at least—

(i) 6,000; or

(ii) Equal to the median number of discharges for urban hospitals for the census region in which the hospital is located as set forth in each year's annual notice of prospective payment rates published under § 412.8(b).

* * * * *

(f) *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 continues to meet the criteria set forth in paragraphs (b) or (c) 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.

(g) *Methodology for calculating case-mix index criteria.* HCFA calculates the national and regional case-mix index value criteria as described in paragraph (g)(1) through (g)(5) of this section.

(1) *National criterion.* HCFA calculates a national case-mix index value for all hospitals that participate in the Medicare program and compares it to the 1981 case-mix criterion of 1.03. The percentage of change between those two figures is used to update the national standard.

(2) *Regional criterion.* HCFA calculates the median urban case-mix index values for each census region by updating the 1981 regional criterion using the percentage of change that is calculated under paragraph (g)(1) of this section.

(3) *Source of data.* In making the calculations described in paragraphs (g)(1) and (g)(2) of this section, HCFA uses all inpatient hospital bills received through at least the midpoint of the Federal fiscal year before the year in which the criteria will be effective.

(4) *Effective date.* HCFA sets forth the national and regional criteria in the annual notice of prospective payment rates published under § 412.8(b). These criteria are effective for cost reporting periods beginning on or after October 1 of the Federal fiscal year to which the notice applies.

(5) *Applicability of criteria to HCFA review of referral center status.* For purposes of the triennial HCFA review of a referral center's status, as described in paragraph (f) of this section, the referral center's case-mix index value for a cost reporting period is evaluated

using the updated case-mix index value criteria published for the Federal fiscal year after the one in which that cost reporting period began.

H. In Subpart H, § 412.118, the introductory text of the section is revised; the introductory text of paragraph (a) is reprinted for the convenience of the reader; paragraph (a)(1) is revised; a new paragraph (b) is added; current paragraphs (b) through (e) are redesignated as paragraphs (c) through (f) respectively; and newly redesignated paragraphs (d)(3), (e)(2), (e)(4), and (f) are revised; and a new paragraph (g) is added to read as follows:

Subpart H—Payments to Hospitals Under the Prospective Payment System

* * * * *

§ 412.118 Determination of indirect medical education costs.

For cost reporting periods beginning on or after October 1, 1984, to determine the indirect medical education costs, HCFA uses the following procedures:

(a) *Basic data.* HCFA determines for each hospital its—

(1) Ratio of full-time equivalent interns and residents to number of beds (as determined in paragraph (b) of this section), excluding those interns and residents in anesthesiology who are employed to replace anesthetists; and

* * * * *

(b) *Determination of number of beds.* For purposes of this section, the number of beds in a hospital is determined by counting the number of available bed days during the cost reporting period, not including beds assigned to newborns and excluded distinct part hospital units, and dividing that number by the number of days in the cost reporting period.

* * * * *

(d) *Determination of payment amount.* * * *

(3) The education adjustment factor determined under paragraph (c) of this section.

(e) *Count of interns and residents.* * * *

(2) The hospital must submit an annual report to its fiscal intermediary. The report must include the following information:

(i) A listing, by specialty, of all interns and residents assigned to the hospital and providing services to the hospital on September 1 of that year. For cost reporting periods beginning on or after October 1, 1984 and before July 1, 1985, the hospital must also report this information for April 15, 1985.

(ii) The social security number of each intern and resident.

(3) No intern or resident will be counted as more than one full-time employee on the date counted, regardless of the number of hospitals in which he or she is providing services.

(4) Fiscal intermediaries must verify the correct count of interns and residents and may review the hospital's entire cost reporting period.

(f) *Limits on count of interns and residents.* Interns and residents who are assigned to and providing services to both a hospital and either a freestanding family practice center, the outpatient department of the hospital, or an excluded distinct part hospital unit on the day that the count of interns and residents (as described in paragraph (e)(2)(i)) is made are not counted as full-time equivalents. Only the percentage of time that these interns and residents spend in the portion of the hospital subject to the prospective payment system on the day the count is made is used to determine the indirect medical education adjustment.

(g) *Intermediary review.* Based on its review of a hospital's documentation concerning the hospital's count of interns and residents under this section, the intermediary may adjust the interns and residents to beds ratio for purposes of the final indirect medical education payment.

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance)

Dated: May 17, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: May 24, 1985.

Margaret M. Heckler.

Secretary.

Editorial Note: The following addendum and appendixes will not appear in the Code of Federal Regulations.

Addendum—Proposed Schedule of Standardized Amounts Effective With Discharges on or After October 1, 1985, and Update Factors and Target Rate Percentages Effective With Cost Reporting Periods Beginning on or After October 1, 1985

I. Summary and Background

In this addendum, we are proposing changes in the methods, amounts, and factors for determining prospective payment rates for Medicare inpatient hospital services during the third and final year of the transition period of the prospective payment system. In addition, we are proposing new target rate percentages for determining the rate-of-increase limits (target amounts) for hospitals excluded from the prospective payment system.

Under the prospective payment system, for hospital cost reporting periods beginning October 1, 1985 through September 30, 1986, except for sole community hospitals, each hospital's payment per discharge will be the sum of a Federal portion that is 75 percent of the Federal rate and a hospital-specific portion that is 25 percent of the hospital-specific rate (section 1886(d)(1)(C) of the Act). Sole community hospitals will continue to be paid on the basis of a rate per discharge composed of 75 percent of the hospital-specific rate and 25 percent of the applicable Federal regional rate. 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 FY 1986, the Federal rates will be comprised of a blend of 50 percent of the national rate and 50 percent of the appropriate regional rate as required by section 1886(d)(1)(D) of the Act. During the first year of the transition period (that is, FY 1984), the Federal rates were comprised solely of the regional rate. During the second year, FY 1985, the Federal rates are comprised of a blend of 25 percent of the national rate and 75 percent of the regional rate.

As discussed in section II below, we are proposing changes in the determination of the prospective payment rates. The method for determining these rates was published in an interim final rule on September 1, 1983 (48 FR 39752) and modified in final rules published on January 3, 1984 (49 FR 234) and August 31, 1984 (49 FR 34728). The proposed changes, to be made prospectively, would affect the calculation of both the Federal rates (adjusted standardized amounts) and the hospital-specific rates that are used to determine transition period prospective payment rates. As part of these changes, we would incorporate adjustments for the updated market basket index and additional adjustments as authorized under section 1886(e)(4) of the Act.

Section III, below, sets forths our proposed changes in determining the rate-of-increase limits for hospitals excluded from the prospective payment system. Section IV contains the tables referred to throughout the preamble to the proposed rule and this addendum.

II. Proposed Change to prospective Payment Rates and DRG Weighting Factors for FY 1986

The basic methodology for determining Federal regional and national prospective payment rates is set forth at §412.63, and for hospital-specific rates is set forth in §412.73. Below we discuss the manner in which are proposing to change some of the factors or methodology used for determining the prospective payment rates. Note that these proposed changes are supported by new studies and data, and that we plan to consider public comments, further studies and even more recent data before issuing final rates, in order to ensure that the final rates are based on the best information and data available at the time. Modifications in response to comments or inclusion of more recent data in the proposed methodology and adjustment factors may result in changes to these proposed rates, including the wage indexes and DRG weights. The Federal rate changes and revised wage index and DRG weights, once issued as final, would be effective with discharges occurring on or after October 1, 1985. Updated hospital-specific rates would be effective for hospital cost reporting periods beginning on or after October 1, 1985.

In summary, we are proposing to establish the FY 1986 Federal rates (that is, the standardized amounts set forth in Table 1, below) by:

- Restandardizing the base year cost data for revised wage index values (described in section II.A.1.);
- Grouping the standardized amounts by urban/rural averages for the nine census regions and the nation, reflecting the most recent geographic designations (described in section II.A.2.);
- Updating the standardized amounts by zero percent, after considering certain factors that resulted in payment rates for FY 1985 that were overstated by 6.2 percent, the forecasted FY 1986 market basket increase of +4.85 percent, and a policy target adjustment factor of −1.5 percent (described in section II.A.3.); and
- Applying the same adjustment factors for Part B costs, FICA taxes, nonphysician anesthetist costs, and outlier payments as were used for FY 1985 (described in section II.A.4).

Further, we propose, for cost reporting periods beginning in FY 1986, not to increase either the hospital-specific rates, for hospitals under the prospective payment system, or the rate-of-increase limits (target amounts), for hospitals excluded from the prospective payment system. In addition, the proposed rule incorporates the survey-based gross wage index, and new DRG weights and outlier criteria, which are included in the tables in section IV, below.

Although we believe the standardized amounts for FY 1985 were so overstated that a significant reduction could be justified, we are not proposing to reduce them for FY 1986. Rather, we propose to maintain them at the same average level as the FY 1985 payment rates. Thus, the amounts in Table 1 differ from the FY 1985 standardized amounts only as a result of restandardization to reflect the proposed new wage index. Section II.A.3., below, discusses our reasons for maintaining the FY 1986 Federal rates at the FY 1985 level.

We recognize that our proposed FY 1986 standardized amounts are not in accord with ProPAC's Recommendation 1. That recommendation reads as follows:

> For fiscal year 1986, the standardized amounts should be updated by the projected increase in the hospital market basket, minus one percentage point, plus an allowance for the estimated increase in real case-mix complexity during fiscal year 1985. The negative one percentage point is a combined adjustment of a positive allowance for scientific and technological advancement and a negative allowance for productivity improvement and hospital product change.
>
> This recommendation reflects the Commission's collective judgment of the appropriate increase in the level of payment per Medicare discharge under PPS, assuming that the Commission's other concerns regarding the market basket component of the update factor, the DRG weighting factors, and the distribution of payments across PPS hospitals are also addressed in the fiscal year 1986 payment rates. Further, this recommendation is based on the premise that no net reductions or increases in average per case payments to hospitals will be effected through measures other than the update factor, such as reducing the indirect teaching adjustment, incorporating capital payment under PPS at a budget-saving level, adjusting for coding changes occurring before fiscal year 1985, or any other changes in total payments per discharge under PPS.

Our rationale for differing with this recommendation is set forth below, in the point-by-point discussion of how we are setting the proposed standardized amounts for FY 1986. Basically, our conclusion, like ProPAC's recommendation, is a summary conclusion that depends on resolution of many specific issues in the rate-setting process.

A. Calculation of Adjusted Standardized Amounts

1. Standardization and Restandardization of Base Year Costs Per Case Used in Calculation of Federal Rates

Section 1886(d)(2)(A) of the Act requires the establishment of base year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the interim final rule, published September 1, 1983 (48 FR 39763), contains a detailed explanation of how base year cost data are established and how they are used in computing the Federal rates.

Section 1886(d)(2)(C) of the Act requires that the updated base year per discharge costs be standardized in order to remove from the cost data the effects of certain causes of variation in cost among hospitals. These include case-mix, wage levels, cost of living, and indirect medical education costs. We have decided to restandardize the base year costs to reflect the proposed survey-based wage index. However, for the reasons given below, we are not proposing to restandardize for other causes of cost variation.

ProPAC recommends that the standardized amounts be rebased in the future using cost data which reflect hospital behavior under the prospective payment system, and that we implement a process to collect the necessary cost data. This would reduce the need to determine annually whether or not changes made since the base period costs were collected should be reflected through restandardization.

We do not believe that section 1886(d) of the Act contemplates rebasing the standardized amounts. Rather, it directs that the rates be updated annually. However, there has been much discussion concerning the desirability of rebasing the standardized amounts so that they are more reflective of hospital behavior under the prospective payment system. There has been concern that changes in hospital behavior, such as shorter lengths of stay and shifts of services to the outpatient setting, are difficult to quantify as part of the annual update because of the limited amount of data available to estimate the effects of these factors. Since rebasing the standardized amounts would automatically reflect changes in hospital behavior under the prospective payment system, it may be appropriate to consider such rebasing in the future.

If we determine that the standardized amounts should be rebased, we expect appropriate cost data will become

available through our Hospital Cost Report Information System (HCRIS). HCRIS is our national data base for all hospital cost report data. It is an automated data collection, processing, and report generation system that contains hospital financial and statistical data. Currently, HCRIS contains data for cost reporting periods ending on or after January 1, 1982 through periods ending on September 29, 1983, and we are expecting soon to begin including data from cost reporting periods subject to the case-mix adjusted cost limits and rate-of-increase limits imposed by sections 1886 (a) and (b) of the Act. Thus, there will be some lag before prospective payment cost report data are available.

a. *Adjustments for Variation in Hospital Wage Levels.* Section 1886(d)(2)(C)(ii) of the Act requires that the updated amounts be standardized by adjusting for variations among hospitals in the average area hospital wage level. Therefore, the updated average cost per discharge is divided into labor-related and nonlabor-related portions. We established labor and nonlabor portions, based on the labor and nonlabor components of the hospital market basket, and standardized the labor portion of the FY 1984 and FY 1985 standardized amounts using the Bureau of Labor Statistics' (BLS) area wage index. However, adoption of a new wage index (discussed in section III of the preamble of this proposed rule) would require us to restandardize the base year costs used to calculate the standardized amounts. Therefore, we have removed the effect of the previous standardization for each hospital's BLS wage index by multiplying each hospital's average cost per discharge value by the old index and restandardized the amounts by dividing that result by the survey-based gross wage index.

b. *Variations in Case Mix Among Hospitals.* Section 1886(d)(2)(C)(iii) of the Act requires that the updated amounts be standardized to adjust for variations in case mix among hospitals. The methodology used for determining the appropriate adjustment factor (that is, the case-mix index) is explained in the September 1, 1983 interim final rule (48 FR 39766–39771). A case-mix index has been calculated for each hospital based on 1981 cost and billing data.

Standardization, necessary to neutralize inpatient operating costs for the effects of variations in case mix, is accomplished by dividing the hospital's average cost per Medicare discharge by that hospital's case-mix index. Table 3a, section VII of the addendum to the September 1, 1983 interim final rule (48 FR 39847–39870) contains the case-mix index values used for this purpose for the FY 1984 and 1985 rates.

Because we are proposing to use new charge-based DRG weights for discharges occurring in FY 1986, we considered calculating new case-mix indexes based on 1981 charge data, and using these indexes to restandardize the base year costs used to determine the prospective payment rates. This would be technically the most accurate method for restandardizing the 1981 cost data. However, we found that restandardizing with 1981 charge-based case-mix index values would have a negligible effect on the standardized amounts. Therefore, we have decided, for simplicity, not to restandardize.

c. *Indirect Medical Education Costs.* Section 1886(d)(2)(C)(i) of the Act requires that the updated amounts be standardized for indirect medical education costs. Therefore, in establishing the standardized amounts used to determine the FY 1984 and FY 1985 prospective payment rates, after adjusting each hospital's inpatient operating cost per discharge for inflation and case-mix, we divided each cost by 1.0 plus the product of double the education adjustment factor (5.795 percent, which, when doubled, yields 11.59 percent) and the individual hospital's adjusted intern and resident-to-bed ratio. We determined that adjusted ratio by dividing the hospital's number of full-time equivalent interns and residents for the cost reporting period by the hospital's bed size determined at the beginning of the data base period to obtain the hospital's intern and resident-to-bed ratio, and dividing that ratio by 0.1.

If we were to revise the education adjustment factor, we could propose to adjust the standardized amounts by removing the effect of the old factor, and restandardizing them using the revised factors. However, since we are not revising the education factor, there is no need to restandardize.

d. *Cost-of-Living Factor for Alaska and Hawaii.* Section 1886(d)(5)(C)(iv) of the Act authorizes the Secretary to provide for such adjustments to the payment amounts as the Secretary deems appropriate to take into account the unique circumstances of hospitals located in Alaska and Hawaii.

Generally, these two States have higher levels of cost in comparison to other States in the nation. The high cost of labor is accounted for in the wage index adjustments discussed above. However, the high cost-of-living in these States also affects the cost of nonlabor items (for example, supplies and equipment). Therefore, in order to remove the effects of the higher nonlabor costs from the overall cost data (that is, for standardization purposes), the nonlabor portion of the average cost per Medicare discharge in hospitals located in Alaska and Hawaii is divided by an appropriate cost-of-living adjustment factor. The factors used for this adjustment have not changed from FY 1985; therefore, we do not plan to restandardize the base-year cost data for cost-of-living adjustments. If new adjustment factors are issued before we publish the final rates, we will consider whether it is necessary to restandardize using the new factors. The table below presents the most recent cost-of-living adjustment factors.

Table of Cost-of-Living Adjustment Factors, Alaska and Hawaii Hospitals

Alaska—All areas	1.25
Hawaii:	
Oahu	1.20
Kauai	1.175
Maui	1.20
Molokai	1.20
Lanai	1.20
Hawaii	1.10

(The above factors are based on data obtained from the U.S. Office of Personnel Management, published in their FPM–591 letter series.)

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 1986 the Federal rates will be comprised of 50 percent of the national rate and 50 percent of the regional rate (section 1886(d)(1)(D) of the Act). Therefore, Table 1 contains 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 groups include hospitals from all urban or rural geographic areas, respectively.

EOMB may announce revised listings of the MSA and New England County Metropolitan Area (NECMA) designations that are used in calculating the standardized amounts. If EOMB makes the announcement before we issue the final rule, we will list the revised MSA/NECMA designations in

the addendum to the final rule. As stated in the January 3, 1984 final rule (49 FR 253), these changes in designation will not be recognized in the prospective payment rates until the beginning of each new Federal fiscal year following the announced changes. It should be noted, however, that Pub. L. 98-473, enacted October 12, 1984, changed the designation of the St. Louis MSA. The proposed wage index (as well as the standardized amounts) included in this proposed rule incorporates this change, which would be effective October 1, 1985 for prospective payment purposes.

3. Updating the Average Standardized Amounts

a. *Legal Requirements.* The basic legal requirements governing the method by which the average standardized amounts are updated are set forth at section 1886(d)(3)(A) of the Act, as follows:

(A) UPDATING PREVIOUS STANDARDIZED AMOUNTS.—The Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area within the United States and for hospitals located in an urban area and for hospitals located in a rural area within each region, equal to the respective average standardized amount computed for the previous fiscal year under paragraph (2)(D) or under this subparagraph, increased for fiscal year 1985 by the applicable percentage increase under subsection (b)(3)(B), and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4), and adjusted to reflect the most recent case-mix data available.

In accordance with section 1886(d)(3)(A) of the Act, we are proposing to adjust the urban and rural average standardized amounts using the applicable percentage as determined by the Secretary in accordance with section 1886(e)(4) of the Act. That section reads as follows:

(4) Taking into consideration the recommendations of the Commission [that is, the Prospective Payment Assessment Commission, or ProPAC], the Secretary shall determine for each fiscal year (beginning with fiscal year 1986) the percentage change which will apply for purposes of this section as the applicable percentage increase (otherwise described in subsection (b)(3)(B)) for discharges in that fiscal year, and which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality.

As prescribed by section 1886(e)(2) of the Act, the Commission, in making its recommendations to the Secretary:

shall take into account changes in the hospital market-basket described in subsection (b)(3)(B), hospital productivity, technological and scientific advances, the quality of health care provided in hospitals (including the quality and skill level of professional nursing required to maintain quality care), and long-term cost-effectiveness in the provision of inpatient hospital services.

Section 1886(b) of the Act sets forth the requirements under which a rate of increase limit (target amount) is established for the inpatient operation costs of hospitals excluded from the prospective payment system. Under this section, a target amount is determined annually for each hospital cost reporting period, based on each hospital's base year cost per case, updated by an "applicable percentage increase."

This "applicable percentage increase" is defined in section 1886(b)(3)(B) as:

one-quarter of 1 percentage point plus the percentage, estimated by the Secretary before the beginning of the period or year, by which the cost of the mix of goods and services (including personnel costs but excluding non-operating costs) comprising routine, ancillary, and special care unit inpatient hospital services, based on an index of appropriately weighted indicators of changes in wages and prices which are representative of the mix of goods and services included in such inpatient hospital services, for such cost reporting period or fiscal year will exceed the cost of such mix of goods and services for the preceding 12-month cost reporting period or fiscal year.

We have used the hospital market basket index as the measure of the cost of goods and services for determining both prospective payment rates and the target amounts applicable to hospitals and units excluded from the prospective payment system. For FY 1986 and subsequent fiscal years, we are required to use the percentage change determined under section 1886(e)(4) of the Act *in place of* this market basket index plus one quarter of one percentage point. However, section 1886(b)(5)(B) specifies that for FY 1986, the percentage determined under section 1886(e)(4) may not exceed the applicable percentage increase that would otherwise be determined for that period. (Note that, under the statute, from FY 1986 on the percentage determined by the Secretary under section 1886(e)(4) will be applied to *both* the prospective payment rates and the target amounts (rate of increase limits) applicable to hospitals and units excluded from the prospective payment system.)

b. *Factors Considered in Determining the Proposed FY 1986 Update.* As is clear from the discussion of the legal requirements for establishing the FY 1986 update, we must consider at least the following factors in addition to the hospital market basket index: hospital productivity, technological and scientific advances, quality of care, cost-effectiveness, and case-mix data. In addition, we believe we should consider prior years' experience.

Since the standardized amounts for FY 1985 are used as the basis for the determination of rates for later years, the level of the FY 1985 standardized amounts must be corrected for any experience that developed since they were published. We believe that it is necessary, each year, to review the appropriateness of the level of the previous year's prospective payment rates for providing reasonable payment for inpatient hospital services furnished to beneficiaries. Further, this review must include assessment of whether the previous year's propsective payment rates have established adequate incentives for the efficient and effective delivery of needed care.

In addition to this general consideration, the FY 1985 adjusted average standardized amounts (Federal rates) were required by law to be adjusted to achieve budget neutrality, that is, to ensure that aggregate payments for the operating costs of inpatient hospital services would be neither more nor less than we estimated would have been paid under prior legislation for the costs of the same services. (The technical explanation of how this adjustment was made was published at 49 FR 34791, August 31, 1984.) These budget neutrality-adjusted rates for FY 1985 are then to be used as the basis for the determination of rates for later years.

Our FY 1985 budget neutrality adjustment factors were based on data and assumptions that resulted in standardized amounts that were higher than necessary to achieve budget neutrality.

Therefore, we believe that the FY 1986 standardized amounts should be established by a methodology that takes into account the prior year's overstatement. To this end, we have identified several factors, discussed in section II.A.3.c., below, that contributed to the overstatement of the FY 1985 standardized amounts. We have determined an appropriate percent value for each of them, and have combined them into a proposed composite correction factor for FY 1986 which equals −6.2 percent.

In addition, we have developed factors representing productivity, technological advances, and the elimination of ineffective practice patterns, which is necessary to ensure the cost-effective delivery of care. Each of these factors interacts with the

others, to some extent, and has an impact on the quality of care. We have determined an appropriate percent value for each of these factors, making conservative assumptions and with regard to their potential effect on quality, and have combined these values into a proposed composite policy target adjustment factor, as discussed in section II. A.3.e., below. For FY 1986, this factor would equal −1.5 percent.

Since the forecasted hospital market basket increase for FY 1986 is +4.85 percent, it is clear that there is a potential justification of a −2.85 percent decrease in the FY 1986 standardized amounts, as compared to those for FY 1985. We have, however, for the reasons discussed in section II. A.3.f., below, decided that such a decrease is undesirable. Therefore, we are proposing to maintain the FY 1986 standardized amounts at the same average level as FY 1985, in effect applying a zero percent update factor.

c. *Corrections for Prior Years' Experience*—(1) *Case mix.* Using patient bill data received through April 1985, and using the FY 1984 relative DRG weights, we have determined that the average case-mix index for hospitals under the prospective payments system has increased 9.6 percent over the 1981 MEDPAR level. We have previously taken 4.47 percent of this case-mix increase into account by adjusting the original FY 1984 standardized amounts by 3.38 percent and reducing the FY 1985 DRG weights by 1.05 percent. (The relationship of these percent changes is multiplicative, rather than additive; that is 1.0338 x 1.0105 = 1.0447.) Thus, the observed case-mix increase to date is 4.9 percent greater than the total prior adjustment (1.096 divided by 1.0447 = 1.049).

Under budget neutrality, these increases in case-mix should not have increased payments to hospitals. The point at issue here is not whether these increases are legitimate or result from "case-mix creep," but whether they would have been recognized under cost reimbursement under prior legislation. As explained in the final rule published August 31, 1984 (49 FR 34770–34775), case-mix increases such as those we have experienced under the prospective payment system would not have resulted in comparable increases in aggregate payments under the case-mix adjusted cost limits and rate of increase limits established under the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248).

Moreover, since real case mix increases result in increased costs per case, we believe that the estimates we made of FY 1984 and FY 1985 cost per case increases for purposes of budget neutrality already incorporated an implicit reognition of the real increase in average case mix that would have occurred regardless of the implementation of the prospective payment system. Hence, we must adjust the standardized amounts downward by 4.9 percent.

Several ProPAC recommendations concerned how increases in case mix should be reflected in determining rates and DRG weights. In Recommendations 1 and 11, ProPAC urged that prospective payments to individual hospitals and in the aggregate should reflect real changes in case mix. In Recommendation 11, it noted that changes in reported case mix that are unrelated to actual differences in the types of patients treated should not be built into future prospective payment rates. In Recommendation 17, which dealt primarily with recalibrating the DRG weights, ProPAC recommended that, for FY 1986, the effects of case mix changes in FY 1985 should be removed from the DRG weights through normalization of the average case weights.

We are in agreement, in principle, that aggregate prospective payments should reflect only "real" changes in case mix but not case mix changes unrelated to actual differences in the types of patients treated. The correction of the standardized amounts discussed above is intended to accomplish this, as well as to preserve the requirement for budget neutrality. However, we do not propose to accept or implement ProPAC's technical recommendation on how to accomplish this.

In particular, we do not agree with ProPAC's position concerning adjustment only for case mix changes occurring during FY 1985. We believe the adjustment should also reflect previously unaccounted for changes in case mix prior to FY 1985. This is because our failure to account for all demonstrable changes in case mix in the development of the budget neutrality adjustment in the prior year resulted in FY 1985 standardized amounts which were overstated. We believe it is essential to adjust the standardized amounts, as the basis for determining the rates for future years, for the amount overstated due to unaccounted for changes in case mix. Therefore, since it is necessary to correct the standardized amounts to the base level that would have achieved budget neutrality, we are proposing to make the case mix correction to the Federal rates rather than through the recalibration of the DRG weights, as recommended by ProPAC.

Our method of normalization of the DRG weights must avoid doubly adjusting for "case-mix creep" in both the rates and the DRG weights, especially in view of the reduction of the FY 1985 DRG weights to take some case-mix increase into account. Since we have adjusted the proposed Federal rates for case-mix increases not previously taken into account, using the most recent available data, we have normalized the proposed DRG weights so that, for the data base used to recalibrate, the weight for the average case using the proposed weights is the same as the weight for the average case using the published FY 1985 weights. Thus, the proposed weights would still reflect the 1.05 percent FY 1985 reduction.

We also agree with ProPAC, in principle that prospective payments should reflect increases in real case mix. However, we do not believe that incorporating an add-on factor to the proposed FY 1986 standardized amounts, as recommended by ProPAC (Recommendations 1 and 17), is necessary to achieve this result. As our billing data show, hospitals have already received the benefit of both real case-mix increases and coding improvements. ProPAC's recommendation is equivalent to proposing an add-on for estimated future case mix increase *in addition to* the increased payments hospitals will continue to receive as a result of assignment of cases in higher weighted DRGs.

RAND Corporation recently did a study for us intended to answer the question: "What percentage of the increase in case mix can be attributed to a truly sicker mix of Medicare inpatients?"

The major conclusions are as follows:

- Total increase in case mix (FY 1984 prospective payment bills over calendar year 1981 MEDPAR) was 8.4 percent, based upon data received through mid-December 1984.
- 2.2 percentage points of the 8.4 percent increase came from medical practice changes composed of 1.6 percentage points for the general trend (technology and a larger share of patients in higher intensity DRGs) and 0.6 percentage points for the shift of many DRG 39 (lens implant) cases to outpatient. The effect of shifting other DRG cases to outpatient sites was negligible.
- There was no increase due to the aging of the Medicare inpatient population over the three-year period.
- 6.1 percentage points of the 8.4 percent increase came from coding

practice changes. 3.4 percentage points of this increase resulted from limitations of the MEDPAR data, and 2.6 percentage points were induced by the payment incentives of the prospective payment system for more accurate coding.

• Even though 2.2 percentage points of the case mix increase resulted from medical practice changes, the amount of the increase in case-mix that should have been passed through in FYs 1984 and 1985, when budget neutrality was in effect, would have been negligible.

Our estimate of total case-mix increase of 9.6 percent is different from RAND's percent for two reasons:

• We have a more recent update and more data.

• Our number included observed case-mix increases through April 1985, and experience during FY 1985, whereas the RAND study is limited to FY 1984 cases and bills received through mid-December 1984.

We are continuing to study ways to measure real case-mix increases. To the extent that these studies demonstrate real increases in average case mix that would not be reflected in prospective payments otherwise, and enable us to accurately measure and estimate the future magnitude of such increases, we would expect to reflect them in the level of prospective payments for FY 1987 or later.

(2) *Market basket.* The forecasted hospital market basket increase factors used to calculate the FY 1985 standardized amounts were 6.2 percent for 1983, 6.0 percent for 1984, and 6.5 percent for 1985. Our latest hospital market basket factors, as of February 1985, reflect more actual experience than those available at the time the FY 1985 rates were published. The most recent factors are 6.3 percent for 1983, 5.7 percent for 1984, and 4.7 percent for 1985. Using these latest market basket factors for correction of the standardized amounts would reduce them by 1.3 percent. We expect to have even more recent and accurate factors available at the time we publish final FY 1986 standardized amounts, and will use those factors in making corrections to the standardized amounts. This proposal is generally consistent with ProPAC's Recommendation 7.

Eight out of 21 ProPAC recommendations dealt with market basket issues. Recommendation 3 related to excluded hospitals and units, and is discussed in section III of this addendum. Recommendations 2, 4, 5, 6, and 9 are discussed in section V.A. of the preamble to this proposed rule. Recommendations 7 and 8 are discussed in this section.

In their seventh recommendation, ProPAC suggested that we make a correction for market basket forecast errors, as follows:

> The update factor should include a correction for substantial errors made in the previous year's forecast of changes in the external price measures used in the hospital market basket. In the judgment of the Commission, substantial errors are those that equal or exceed 0.25 percentage points (or, when rounded in the published forecasts, 0.3 percentage points). The Commission will undertake a study to determine the extent to which differences between forecasted and actual increases in the internal price change measures are due to factors beyond the hospitals' control. Substantial errors determined after study to be due to factors beyond the hospitals' control should be corrected in the update factor.

As already noted, we are proposing to correct forecast errors. However, ProPAC specifically recommends that we correct only for error related to external price measures, whereas we are proposing to correct for all errors, whether related to external or internal measures. Nearly 58 percent of the market basket relates to internal measures. Correcting only for external measures could adversely affect hospitals if the error was an underestimation of internal price measure increases. At this time, as noted by ProPAC, we cannot differentiate adequately between the effects of forecast error and hospital behavior. We agree with ProPAC that further study should be done to distinguish between them. However, in the absence of such study, to refuse to correct forecast errors related to internal price measures would seem to presume that all of the difference between forecasted and actual increases were attributable to hospital behavior. Therefore, we are proposing to correct for all forecast error.

In Recommendation 8, ProPAC recommends that we seek a statutory change to authorize these forecast error corrections, as follows:

> The Secretary has determined that she does not have the statutory authority to correct for market basket forecast errors. Therefore, the Secretary should seek statutory change to provide explicitly that the update factor include a correction for errors in forecasting the market basket beginning in fiscal year 1986.

We do not agree that the Secretary has determined that she does not have this statutory authority. In the August 31, 1984 final rule we did respond to a related comment as follows:

> *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 throught 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. (49 FR 34767)

We still are not proposing to make retroactive adjustments, just as ProPAC has not recommended making retroactive adjustments. We believe that there is ample statutory authority to correct previous market basket forecasting errors *prospectively*. Section 1886(b)(3)(B) of the Act, which sets forth the statutory basis of the market basket index, provides that the index must represent the amount that estimated costs for a given period exceed "the cost of such mix of goods and services" for the preceding period. The point of reference for the projected increase is the *cost* of goods and services, not a previous forecast of the cost of goods and services. We must presume that the Secretary has the authority to consider the most recent measure of that cost, based on the best data available. It would be unreasonable to read the statute as requiring estimation errors to be carried forward indefinitely without adjustment to reflect the actual level of the cost of goods and services. *Not* to correct forecasting errors would risk compounding errors over time, and could result in significant understatement or overstatement of the prospective payment rates. Hence, we believe it is necessary to make corrections of prior years' estimates before proceeding to an estimate of the next year's changes. However, these corrections must be made only to ensure that future rates are set accurately, not to compensate for prior overpayments or underpayments. Thus, we agree with and accept, in general, ProPAC's Recommendation 7.

(3) *Additional causes for the overstatement of FY 1985 Federal rates.* In addition to the factors above, which we believe we must correct, other considerations also contributed significantly to the overstatement of the FY 1985 standardized amounts.

When we set the standardized amounts for FY 1985, we made assumptions on hospital cost per case increases in order to estimate, for purposes of budget neutrality, the

payments that would have been made had prior payment rules continued in effect. These assumed rates of increase in cost per case were 10.9 percent for 1983, 9.8 percent for 1984, and 9.8 percent for 1985. These assumptions were significantly higher than the actuarial estimates. The actuarially estimated rates of increase in cost per case (which ignore any effects of the prospective payment system such as shorter lengths of stay) are 9.8 percent for 1983, 8.1 percent for 1984, and 8.5 percent for 1985. After application of the revised market basket, discussed previously, use of these actuarial estimates would reduce the standardized amounts by an additional 1.3 percent.

For FY 1985, we also used 1981 unaudited, as-submitted cost reports (to get recent data as quickly as possible) to set the Federal rates. The hospital-specific rates were set using later (1982 or 1983) cost reports that were fully audited. The audits adjusted the total cost of these reports downward by $2.2 billion, of which Medicare realized about $900 million in inpatient recoveries. Since the cost data used to set the Federal rates do not reflect audit recoveries, it is likely that they are overstated by a similar amount. We do not know precisely what proportion of this amount applies to capital-related costs and other costs that would not affect the Federal rates. However, approximately 90 percent of hospitals' total inpatient costs are operating costs, and if only 40 percent of the $900 million in audit recoveries is related to Federal payments for inpatient operating costs, there would have been, conservatively estimated, at least a one percent overstatement of allowable costs incorporated into the cost data to determine the FY 1985 standardized amounts.

Both of these causes for the overstatement of the standardized amounts are related to our own procedures and decisions. Thus, they are unlike both the market basket index, which is a technical measure of input prices, and the increases in case-mix, which primarily reflect changes in hospital coding. Further, as discussed below, even without making these corrections we could justify a negative update factor for FY 1986, although we are not proposing one. Since we have decided to propose FY 1986 standardized amounts set at the same level as those for FY 1985, making corrections now to reflect the cost per case assumptions and the audit data would have no practical effect. Therefore, we have decided not to propose at this time to correct the standardized amounts for these factors. We are especially concerned, however, to reexamine in more detail the effects of these problems, particularly of using unaudited data, and their long-term implications for the level of the standardized amounts.

4. Proposed Composite Correction Factor

We are proposing to adjust the standardized amounts as follows to take into consideration the overstatement of the prior year's amounts:

	Percent
Case mix	−4.9
Market basket	−1.3
Composite correction factor	−6.2

d. *Forecast Market Basket Increase.* ProPAC made several recommendations related to the hospital market basket index. Recommendations 7 and 8, which deal with forecasting errors, are discussed above. Their other recommendations are discussed in section V of the preamble to this proposed rule.

We must consider forecasted market basket index increases in determining the percentage increase for both prospective payment rates and rate-of-increase limits (target amounts) for FY 1986 and subsequent fiscal years. However, the percentage change determined under section 1886(e)(4) of the Act does not have to equal the market basket index plus one quarter of one percentage point, although section 1886(b)(3)(B) of the Act does specify that for FY 1986 the percentage determined under section 1886(e)(4) of the Act *may not exceed* the applicable percentage increase that would otherwise be determined for that period.

FORECASTED MARKET BASKET (MB) PERCENT INCREASE PLUS ONE QUARTER OF 1 PERCENTAGE POINT

	MB percentage	MB + 1/4 percentage
Calendar year:		
1985	4.7	4.95
1986	4.9	5.15
1987	5.5	5.75

Based on these calendar year factors, we project a hospital market basket increase factor for FY 1986 (that is, October 1, 1985 to September 30, 1986) of 4.85 percent. Thus, the maximum update factor we could use in updating the FY 1986 standardized amounts, that is, the market basket plus one-quarter of one percentage point, would be 5.1 percent.

e. *Composite Policy Target Adjustment Factor*—(1) *General considerations.* In analyzing the prospective payment system,[1] we must consider the effects of the rates we set on outcomes such as quality of health care, access to care, the financial viability of the hospital industry, and the viability of the Medicare Part A Trust Fund. The annual prospective payment percentage increase factor should be set so that it provides incentives for desired outcomes under the prospective payment system. To achieve incentives for the desired outcome targets, we must ensure that the annual prospective payment update factor takes proper account of variables affecting the cost, efficiency, effectiveness and quality of production of hospital inpatient care. Our objective is to translate the intent of the statutory requirements for updating the prospective payment rates into a methodology for making adjustments to the current update factor that would enable us to express our consideration of these variables as policy targets.

To this end, we have identified three factors that correspond to matters that must be considered under sections 1886 (e)(2) and (e)(4) of the Act. For FY 1986, we are proposing to incorporate into the prospective payment update factor a composite "policy target adjustment factor" that takes account of productivity (efficiency), cost-effective technologies, and cost-ineffective practice patterns. Although, for the purposes of analysis and discussion, we have developed separate values for each of these three factors, we are proposing to combine them into a composite policy target adjustment factor, which would be considered in determining the FY 1986 prospective payment update factor.

As discussed in Appendix B, "quality," which is explicitly cited as one of the factors to be considered under section 1886(e)(2) of the Act, is an outcome factor that must be incorporated in the evaluation of the impacts of input/output factors. Thus, the effect on quality is a consideration in each of the three factors included in the composite policy target adjustment factor. We believe that to the extent that productivity and cost-effective use of technology are increased and cost-ineffectiveness is discouraged, quality of care should be enhanced. The proposed productivity and cost-effectiveness

[1] In determining how to implement the requirements of sections 1886 (e)(2) and (e)(4) of the Act, we have considered an analytic framework developed by the Division of National Cost Estimates of HCFA's Office of the Actuary. A technical explanation of this framework is included as Appendix B of this proposed rule.

offsets, discussed in greater detail below, reflect values that we believe can be and have been achieved with no adverse effects on quality. Productivity and cost-effectiveness not only need not compete with quality, but are often best pursued together with it. For example, practice patterns that minimize the potential for iatrogenic and nonsocomial diseases result in reduction of ineffective practices, eliminate unnecessary costs, and directly contribute to improved health status. Also, under the prospective payment system, a hospital that improves productivity and reduces its per case costs has an opportunity for an improved margin of revenue over costs. This margin may be shared many ways, depending on the choice of the hospital, including expending a portion of it in ways that would improve quality.

As discussed in section L of the impact analysis (Appendix A), there are varied and extensive efforts under way to monitor the effects of the prospective payment system on access to and quality of care. PROs, for example, are setting their own policy targets for reducing risk and improving quality of hospital care. The results of monitoring the quality of hospital services will be incorporated on an ongoing basis in our consideration of the appropriate levels at which to set each of the proposed adjustments included in the composite policy target adjustment factor. Thus, consistent with the analytic approach adopted by ProPAC, we do not believe it is necessary to incorporate a separate quality factor in the composite policy target adjustment.

The term "policy target adjustment factor" includes the effects of productivity, technology, and long-term cost effectiveness on the prospective payment rate per discharge. These factors are policy-determined variables reflecting targets, rather than historical experience, and they are difficult to quantify individually with existing data sources.

We do not think it is currently feasible to make independent and precise empirical estimates for the individual factors of productivity, technology, and ineffective practice patterns. Existing studies sometimes report to have a measure or an indicator for one of these three concepts, but such measures inadvertently have some unknown mixture of all three. Interaction relationships inherent among the three factors suggest that setting individual target values for the three components is suggestive, at best. Given the current data limitations, we feel it is more reasonable to look at all three factors, combined, than to strictly study each factor individually.

With this caveat in mind, we discuss the individual factors below, and propose values for each factor, to be combined into a composite policy target adjustment factor. The conservative values that we propose recognize the probability that available measures will not be able to absolutely separate them.

(2) *Productivity.* Productivity measures output per unit of input. The question, "Could the same output have been accomplished with fewer resources or with a different, less costly, mix of resources?" is answered by productivity measures. Hospitals often hire industrial engineers and management experts to increase productivity (efficiency) in hospital operations. Productivity improvements result in rises in output prices that are less than the rise in the price of inputs (holding profit margin and the nature of the outputs constant). In competitive industries, consumers benefit from the increases in productivity by paying lower prices. Likewise, under the prospective payment system, increases in productivity should be reflected by lower prices (that is, prospective payment rates) than would otherwise be the case.

Although studies of hospital productivity have been done, and some measures of productivity have been devised for specific applications, valid productivity indexes comparable to those for other industries are not currently available for the entire hospital industry. Various economy-wide productivity indexes developed by BLS indicate national productivity increases of approximately three percent annually for the last two years (1983 and 1984). However, long-term average rates of increase show substantial variation depending upon the time period covered, the industries included, and the productivity measure used (multi-factor productivity or labor productivity).

Given the years of retrospective, cost-based reimbursement, with attendant perverse incentives for productivity, we believe hospitals have the potential for substantial improvements in productivity. We expect that a two percent or more annual increase in productivity would not be unreasonable. We propose to incorporate a 1.0 percent productivity offset (reduction) in the FY 1986 policy target adjustment factor. We believe this is a conservative offset that would allow the hospitals to retain more than half of potential productivity gains. We believe sharing the benefits of the prospective payment system in this way provides desirable incentives.

(3) *Cost-effective technologies.* Certain technological changes, especially those related to the adoption of new products (with accompanying labor and nonlabor inputs), increase the operating cost of treating illness but also improve health status commensurately. We believe that the prospective payment rates should recognize new science and technology factors, which are cost-increasing, but also enhance health status. This should provide positive incentives for continued technological and scientific excellence.

The effects of new technologies and scientific advances on operating cost and health status are very complex and are difficult to isolate. Typically, a specific new technology increases cost in some uses and decreases costs in other uses. Concurrently, in some situations, health status is improved while in other situations, it may be unaffected or even worsened using the same technology. Separating out the relative importance of each of these effects for individual technologies and new technologies that are cost-increasing has proven to be elusive from a statistical point of view. Yet, it is important to allow for new technologies and scientific advances. Therefore, we propose to incorporate a 1.5 percent add-on in the FY 1986 policy target adjustment factor. We expect this add-on to promote, within bounds, the development and use of cost-effective new technologies. The 1.5 percent add-on allows significant growth over time in cost-increasing, health-enhancing new technologies and scientific advances, especially when one considers that all capital costs are currently paid on a cost basis and that this affords an additional allowance for accompanying labor and non-labor inputs.

(4) *Elimination of ineffective practice patterns.* Just as cost-effective new technologies and scientific advances are expected to increase a hospital's production of cost-effective outputs, and must be encouraged, existing practice patterns that are ineffective in the production of outputs should be discouraged. We believe the implementation of the prospective payment system has substantially increased the incentive for such changes of behavior, by affording hospitals a clear benefit from pursuing them, rather than the disincentive of potential decreases in cost reimbursement. As a prudent buyer, we want to get value for our money. We desire to share in the benefits accruing from more effective

and economical provision of care. Thus, one of our policy targets in setting the level of the Federal rates is to ensure that those rates afford an opportunity for buyer and provider of services to share the benefits resulting from the elimination of ineffective practice patterns.

Effectiveness compares the objective of improving health status with alternative uses of resources for achieving that objective to determine whether the right, or best available, care is being provided. A hospital can improve the effectiveness with which it delivers health care by:

- Eliminating practices that do not need to be done at all; and
- Ensuring that the only procedures and services furnished in the hospital are those that require a hospital level of care.

Two examples of changes in practice patterns that result in lower inpatient costs with no associated decrease in quality of care are: (1) The elimination of selected diagnostic tests, because their use does not improve health status; and (2) the reduction in length of stay with no decrease or change in health status outcome.

For example, average length of stay for hospitals in States subject to the prospective payment system (that is, excluding hospitals in Maryland, Massachusetts, New Jersey, and New York, which are paid under specially approved State systems) declined 11 percent in FY 1984. Hospitals experience a reduction in costs associated with reductions in length of stay. For purposes of determining additional payments for day outlier cases, we consider the marginal operating cost of an additional day of stay to be equal to 60 percent of the average per diem payment for the applicable DRG, excluding payment for pass-through costs that are not included in the prospective payment rate. (See § 412.82(c).) If we assume that this represents the ratio of marginal cost to average cost, we must conclude that our 11 percent reduction in length of stay would result in about a 6.6 percent reduction in cost per case. Of course, it can be argued that the marginal operating cost of an additional day of care may be significantly less than 60 percent of the average per diem cost. However, even if we assumed marginal costs to be only 40 percent of the average per diem cost, the FY 1984 reduction in length of stay would result in about a 4.4 percent reduction in cost per case. In addition to these considerations, we wish to point out that these probable reductions in costs do not reflect other changes in utilization of ancillary and other services, which have probably generated further reductions in the average cost per case under prospective payment.

We believe that the data on per case costs on which the FY 1984 and FY 1985 standardized amounts were based included a significant component of unnecessarily high costs reflecting ineffective practice patterns. There have since been, and there will presumably continue to be, significant changes in practice patterns, with corresponding reductions in cost per case. We believe that hospitals deserve to accrue benefits from these changes, but, nonetheless, we believe it is reasonable for us to share in them also. Therefore, we propose to incorporate a 2.0 percent offset (reduction) in the policy target adjustment factor for FY 1986.

(5) *ProPAC Recommendations on Discretionary Adjustments.* ProPAC coined the term "discretionary adjustment factor" to refer to the effect of taking into consideration productivity, technology, long-term cost-effectiveness, and changes in product on the payment per discharge under the prospective payment system. They recommended (Recommendation 10: Allowance for Productivity and Scientific and Technological Advancement Goals) that the FY 1986 prospective payment update factor include a discretionary adjustment factor of −1.0 percent. This adjustment would make allowance for "scientific and technological advancement, productivity improvement, and hospital product change."

In its discussion of the basis of this recommendation, ProPAC expressed many of the same issues and concerns as we have. It noted that the implicit judgments necessary in developing quantitative allowances for such variables have little precedent, and that the technical methods and data available upon which to base these judgments yield imprecise estimates. Nonetheless, its analysis and concerns are similar to ours, and it has recommended a −1.0 percent discretionary adjustment factor reflecting the following broad guidelines.

Adjustments	Percentage allowance
Scientific and technological advances	+1.5 to +2.0.
Hospital productivity	−1.5 to −2.0.
Changes in the hospital product	−1.0.
Net adjustment	−1.0.

Although these factors and values are not identical to ours, they are comparable, and suggest a very similar combination of offsets and add-ons and very similar magnitudes.

(6) *Proposed Composite Policy Target Adjustment.* For FY 1986 and thereafter, we propose to adjust the average standardized amounts by a percentage composite policy target adjustment factor, as authorized under section 1886(e)(4) of the Act. For FY 1986, this composite policy target adjustment factor is a composite of the offsets and add-ons for productivity, cost-effective technologies, and cost-ineffective practice patterns, as follows:

	Percent
Productivity	−1.0
Cost-effective technologies	+1.5
Cost-ineffective practice patterns	−2.0
Composite policy target adjustment factor	−1.5

(f) *Summary.* The combined effect of the forecasted increase in the hospital market basket, the proposed composite correction factor, and the proposed composite policy target adjustment factor would be a negative FY 1986 prospective payment update factor, as follows:

	Percent
Forecasted market basket increase	+4.85
Composite correction factor	−6.2
Composite policy target adjustment factor	−1.5
Total	−2.85

Such a negative update factor would result in a significant decrease in the standardized amounts for FY 1986, compared to those for FY 1985, and a corresponding reduction of anticipated revenue for hospitals subject to the prospective payment system. However, although we have substantial technical and legal justification for issuing FY 1986 standardized amounts that would be lower, on the average, than FY 1985 standardized amounts, we do not propose to do so. In addition, because we believe it is important to protect the prospectivity of this payment system, we do not plan to recoup any excessive payments resulting from the overstated FY 1985 standardized amounts.

The prospective payment system was intended, from its inception, to produce significant changes in the hospital industry. However, we do not want to cause these changes to take place too rapidly, because that may result in disruptions and unintended consequences that would adversely affect the industry, its patients, and us. Neither do we want to encourage changes that would compromise the access to quality inpatient hospital care historically enjoyed by Medicare

beneficiaries. Our objective is to set the FY 1986 update factor at a percentage level that takes into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality, in accordance with section 1886(e)(4) of the Act, and we believe that the payment rates should be set no lower than we have proposed in order to assure that this statutory standard is met.

We believe that, in an ideal course of events, the FY 1985 amounts would have been set at a lower level, and the FY 1986 amounts would be increased appropriately. However, the implementation of a new system seldom follows an ideal course. Moreover, we recognize that actually decreasing the standardized amounts would have adverse effects, not only relative to the expectations of affected hospitals, but on the development and acceptance of the prospective payment system. We also recognize that a large portion of the overstatement of the FY 1985 standardized amounts is not attributable to the actions or behavior of the hospital industry. The overstatement is to some extent the result of our desire, shared by Congress, to proceed cautiously with the implementation of the new system. Therefore, it would be inappropriate to set the FY 1986 Federal rates at a level that would appear to be punitive of the hospital industry.

Thus, we are proposing FY 1986 standardized amounts that are set at the same level as those for FY 1985. Because we restandardized the base year costs to reflect the proposed new survey-based wage index, the labor portions of the amounts set forth in Table 1, in section IV, below, are not identical to those of last year. However, the nonlabor portions of the proposed national and regional Federal rates, which are not affected by the wage index, are identical to those for FY 1985. For the reasons given above, we believe that the resulting payments would take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality.

4. Other Adjustments to the 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 under which Medicare's payment to the hospital discharges the beneficiary's liability to pay for the services furnished. In order to adjust urban and rural regional and national standardized amounts per discharge so that they represent costs previously billed under Part B, we increased the amounts by a 0.13 percentage increase in both FY 1984 and FY 1985. We are proposing to make further adjustments for this factor in FY 1986 or in the future because the appropriate adjustment has been built into the FY 1985 base.

b. *FICA Taxes.* Section 1886(b)(6) of the Act requires that adjustments be made in the base period costs in recognition that certain hospitals were required to enter the Social Security system and begin paying FICA taxes as of January 1, 1984. In FY 1984 and FY 1985, we increased the urban and rural regional and national standardized amounts by 0.18 percent to account for additional costs of payroll taxes for hospitals entering the Social Security system. We are proposing to make no further adjustments for this factor in FY 1986 or in the future because the appropriate adjustment has been built into the FY 1985 base.

c. *Nonphysician anesthetist costs.* In the August 31, 1984, final rule, we implemented section 2312 of Pub. L. 98-369, which provided that hospital costs for the services of nonphysician anesthetists will be paid in full as a reasonable cost pass-through for cost reporting periods beginning before October 1, 1987.

We did not directly reduce the FY 1985 Federal rates to exclude the estimated costs of these services, because any required adjustment would be incorporated in the budget neutrality adjustment factors applied to the national and regional standardized amounts. (See 49 FR 34794; August 31, 1984). Since the FY 1986 standardized amounts are derived from an update of the FY 1985 amounts, which were adjusted for budget neutrality, the rates will automatically include the appropriate adjustment. We do not propose to make any further adjustments to the Federal rates for this factor for either FY 1986 or FY 1987.

d. *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 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 further directs that outlier payments may not be less than five percent or more than six percent of total payments projected to be made based on the prospective payment rates in any year.

In the September 1, 1983 interim final rule (48 FR 39767), we estimated that outlier payments for FY 1984 would be 6.0 percent of total payments (including both standard prospective payment system payments and outlier payments). We made the maximum estimate permitted under the law in order to ensure that we would provide an adequate margin for outlier payments.

In the final rule published August 31, 1984 (49 FR 34728), we reduced 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 for FY 1985, while providing proportionately greater payment for typical cases and avoiding any great risk of general disadvantage to hospitals. We believe that it was in the greater interest of hospitals and the program to eliminate some of the reserve for outliers and correspondingly increase the amount in the standardized amounts, thereby providing hospitals with somewhat larger Federal rates for typical cases. We note that this has had the effect of increasing the predictability of total payments for hospitals in that less of the total is attributable to those cases that meet particular qualifications. Therefore, we propose to continue to set the size of the outlier reserve at approximately the five percent level for FY 1986. As indicated in the previous rules on prospective payment, we will pay for any outlier that meets the criteria in § 412.80, even if aggregate outlier payments result in more than five percent (as proposed) of total payments.

The FY 1985 standardized amounts were reduced by means of the budget neutrality methodology to the level necessary to take into account outlier payments of five percent of total payments based on the Federal rates. (See 49 FR 34795.) We do not propose to make any further adjustments to the standardized amounts for FY 1986 or future years, unless we later propose to increase the size of the outlier reserve.

We are proposing to revise the day outlier and cost outlier thresholds, using the most recent length of stay and charge data available, to ensure that total estimated outlier payments for FY 1986 would be 5.0 percent of total payments. We are proposing that a discharge in FY 1986 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 17 days or 1.94 standard deviations. (For FY 1985 we set the day outlier threshold at the lesser of 22 days or 1.94 standard deviations.) We refer the

reader to Table 5 in this addendum for the proposed DRG day outlier thresholds.

For FY 1986, we are also proposing that 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 $13,500. (For FY 1985, we set the cost outlier thresholds at the greater of 2.0 times the Federal rate for the DRG, or $13,000.)

B. Adjustments for Area Wage Levels and Cost-of-Living

This section contains an explanation of the application of two types of adjustments to the adjusted standardization amounts that will be made by the intermediaries in determining the prospective payment rates as described in section D. below. For discussion purposes, it is necessary to present the adjusted standardized amounts divided into labor and nonlabor portions. Table 1, as we propose to revise it in this addendum, contains the actual labor-related and nonlabor-related shares that will be used to calculate the prospective payment rates.

1. Adjustment for Area Wage Levels

Section 1886(d)(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 section III. of the preamble to this proposed rule, we discuss a new wage index based on our own wage survey data. This index is set forth in Tables 4a and 4b of section IV. of this addendum.

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 1986, the adjustment necessary for nonlabor-related costs for hospitals in Alaska and Hawaii would be 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	1.20
Kauai	1.175
Maui	1.20
Molokai	1.20
Lanai	1.20
Hawaii	1.10

Note.—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

As discussed in section II of the preamble to this proposed rule, we have developed a classified system for all hospital discharges, sorting them into Diagnosis-Related Groups (DRGs), and have developed weighting factors for each DRG that are intended to reflect the relative resource consumption associated with each DRG.

Table 5 of section IV of this addendum contains the weighting factors that we propose to use for discharges occurring in FY 1986. These factors have been recalibrated as explained in section II. of the preamble, and reflect the changes in the GROUPER program summarized in Table 6.

To identify certain DRGs more clearly, the titles of the following DRGs would be revised as indicated below. These changes are in addition to those discussed in section II.B. of the preamble.

DRG	Current title	Proposed title
15	Transient Ischemic Attack.	Transient Ischemic Attack and Precerebral Occlusions.
61	Myringotomy Age>17	Myringotomy with Tube Insertion Age>17
62	Myringotomy Age 0-17	Myringotomy with Tube Insertion Age 0-17
76	O.R. Proc on the Resp System Except Major Chest With C.C.	Other Respiratory System O.R. Procedures with C.C.
77	O.R. Proc on the Resp System Except Major Chest W/O C.C.	Other Respiratory System O.R. Procedures W/O C.C.
157	Anal Procedures Age>69 and/or C.C.	Anal and Stomal Procedures Age>69 and/or C.C.
158	Anal Procedures Age<70 W/O C.C.	Anal and Stomal Procedures Age<70 W/O C.C.
209	Major Joint Procedures.	Major Joint and Limb Reattachment Procedures.
263	Skin Grafts for Skin Ulcer or Cellulitis Age>69 and/or C.C.	Skin Grafts and/or Debridement for Skin Ulcer or Cellulitis Age>69 and/or C.C.
264	Skin Grafts for Skin Ulcer or Cellulitis Age<70 W/O C.C.	Skin Grafts and/or Debridement for Skin Ulcer or Cellulitis Age<70 W/O C.C.
265	Skin Grafts Except for Skin Ulcer or Cellulitis with C.C.	Skin Grafts and/or Debridement Except for Skin Ulcer or Cellulitis with C.C.
266	Skin Grafts Except for Skin Ulcer or Cellulitis with W/O C.C.	Skin Grafts and/or Debridement Except for Skin Ulcer or Cellulitis W/O C.C.
285	Amputations for Endocrine, Nutritional + Metabolic Disorders.	Amputations of Lower Limb for Endocrine, Nutritional + Metabolic Disorders.
359	Tubal Interruption for Non-malignancy.	Incisional Tubal Interruption for Non-malignancy
376	Postpartum Diagnoses W/O O.R. Procedure.	Postpartum and Postabortion Diagnoses W/O O.R. Procedure.
377	Postpartum Diagnoses with O.R. Procedure.	Postpartum and Postabortion Diagnoses with O.R. Procedure
381	Abortion with D+C.	Abortion with D+C or Aspiration Curettage.
386	Extreme Immaturity, Neonate.	Extreme Immaturity or Respiratory Distress Syndrome, Neonate.
401	Lymphoma or Leukemia with minor O.R. Proc Age>69 and/or C.C.	Lymphoma or Leukemia with other O.R. Proc Age>69 and/or C.C.
402	Lymphoma or Leukemia with minor O.R. Proc Age>70 W/O C.C.	Lymphoma or Leukemia with Other O.R. Procedure Age>70 W/O C.C.
449	Toxic Effects of Drugs Age>69 and/or C.C.	Poisoning and Toxic Effects of Drugs Age>69 and/or C.C.
450	Toxic Effects of Drugs Age 18-69.	Poisoning and Toxic Effects of Drugs Age 18-69 W/O C.C.
451	Toxic Effects of Drugs Age 0-17	Poisoning and Toxic Effects of Drugs Age 0-17

D. Calculation of Prospective Payment Rates for FY 1986

FY 1986 represents the third 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, 1985 and Before October 1, 1986

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. For the first cost reporting period under prospective payment, a hospital-specific rate was calculated for each hospital, derived generally from the following formula:

$$\frac{\text{Base year costs per discharge}}{\text{1981 case-mix index}} \times \text{updating factor} = \text{Hospital-Specific Rate}$$

For the first prospective payment cost reporting period, the hospital-specific portion equaled 75 percent of the hospital-specific rate. For each subsequent transition period cost reporting period, the hospital-specific portion is derived as follows:

Previous Period's Hospital-Specific Rate × Updating Factor × Blending Percentage × DRG Weight

The blending percentage for cost reporting periods beginning in FY 1986 is 25 percent. For a more detailed discussion of the hospital-specific

portion, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772).

a. *Updating the Hospital-Specific Rates for FY 1986 Cost Reporting Periods.* We are proposing to carry forward the hospital-specific rates for FY 1985 cost reporting periods without increasing them for FY 1986. For reasons discussed below, the FY 1985 hospital-specific rates were set too high, just as the FY 1985 Federal rates were. If we were to propose to correct the rates prospectively for the full amount of the overstatement, it would result in a reduction of the hospital-specific rates. For the same reasons that we have decided not to reduce the FY 1986 Federal rates, we have decided that it is preferable to carry the rates forward unchanged for the last year of the transition period.

For cost reporting periods beginning in FY 1985, we determined each hospital's hospital-specific rate (before applying the 50 percent blending percentage for the second year of the prospective payment transition period) by applying the applicable compounded target rate percentage, as adjusted for budget neutrality, to the hospital's previous year's hospital-specific rate. The target rate percentages we used incorporated the same overstated market basket percentages as were used in determining the FY 1985 standardized amounts (Federal rates). In addition, each hospital's base-year costs were adjusted to remove the effect of the hospital's 1981 case-mix index, so that the hospital-specific portion, as well as the Federal portion, could be adjusted by a DRG weight in determining payment. As a result, the unanticipated rate of increase in case mix since the implementation of the prospective payment system, discussed above, has also resulted in overstated hospital-specific rates. Note that these are the same factors for which corrections are being applied in determining the proposed Federal rates, as discussed in section II.A.3., above.

The requirement of budget neutrality (section 1886(e)(1) of the Act), which is discussed in relation to the Federal rates in section II.A.3, above, also governed the level of the target rate percentage increase for hospital-specific rates for cost reporting periods beginning in FY 1985. The intent of Congress was that the hospital-specific rates for FY 1986 be updated from *budget neutral* rates for the previous period. However, the target rate percentages for cost reporting periods beginning in FY 1985 were too high to achieve actual budget neutrality. Therefore, we believe it could be argued that we are required to adjust those hospital-specific rates downward before updating them for cost reporting periods beginning in FY 1986.

The reductions to the hospital-specific rates that would be necessary to correct the FY 1985 overstatement fully are as follows:

	Percent
Case-mix	−4.9
Market basket	−1.3
Combined	−6.2

b. *Calculation of Hospital-Specific Portion.* For hospital cost reporting periods beginning in FY 1986, the hospital-specific portion of a hospital's payment for a given discharge would be calculated by:

Step 1—Multiplying the previous cost reporting period's hospital-specific rate by 25 percent, and

Step 2—Multiplying the amount resulting from Step 1 by the specific DRG weighting factor applicable to the discharge. The result is the hospital-specific portion of the FY 1986 prospective payment for a given discharge.

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 and hospitals that meet the criteria in § 412.74 are considered new providers for purposes of the prospective payment system. Their prospective payment rates are computed solely on the Federal rates. Thus, new providers are paid a blend of 50 percent of the appropriate Federal regional rate and 50 percent of the Federal national rate for discharges occurring on or after October 1, 1985 and before October 1, 1985 and before October 1, 1986.

2. Federal Portion

For cost reporting period beginning on or after October 1, 1985 and before October 1, 1986, the Federal portion of the hospital's total prospective payment will be 75 percent of the hospital's Federal rate. Beginning with discharges occurring on or after October 1, 1985, the Federal rate is comprised of a blend of the appropriate Federal regional rate (50 percent) and the Federal national rate (50 percent).

III. Proposed Target Rate Percentages for Hospitals and Hospital Units Excluded From the Prospective Payment System

A. Background

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established by section 1886(b) of the Act and implemented in § 405.463 of the regulations. Under these limits, an annual target amount (stated as inpatient operating cost per discharge) is set for each hospital, based on the hospital's own cost experience. This target amount is applied as a ceiling on the allowable costs per discharge for the hospital's next cost reporting period.

A hospital that has inpatient operating costs per discharge in excess of its target amount would be paid no more than that amount. However, a hospital that has inpatient operating costs less than its target amount would be paid its costs plus the lower of (1) 50 percent of the differences between the inpatient operating cost per discharge and the target amount, or (2) five percent of the target amount.

Each hospital's target amount is adjusted annually, before the beginning of its cost reporting period, by an applicable target rate percentage for the 12-month period, prorated based on calendar year target rate percentages. For cost reporting periods beginning in FY 1983 and FY 1984, the applicable target rate percentage was the estimated hospital market basket increase factor plus one percentage point. For cost reporting periods beginning in FY 1985, the applicable target rate percentage is the estimated hospital market basket increase factor plus one-quarter of one percentage point, as prescribed by section 1886(b)(3)(B) of the Act. For cost reporting periods beginning in FY 1986 and thereafter (that is, on or after October 1, 1985), the target rate percentage will be adjusted by an update factor determined by the Secretary under section 1886(e)(4) of the Act, considering the recommendations of ProPAC under section 1886(e)(2) of the Act.

B. Proposed Target Amounts for Cost Reporting Periods Beginning in FY 1986

For cost reporting periods beginning in FY 1986, we are proposing to carry forward each hospital's previous year's target amount without increase. This is consistent with the update we are proposing for both Federal rates and hospital-specific rates under the prospective payment system and would comply with the provisions of sections 1886(b)(3)(B) and 1886(e)(4) of the Act, which contemplate a single "percentage change" for all hospitals. In discussing the percentage change, these sections of the Act do not distinguish between hospitals subject to or excluded from the prospective payment system. Thus, we

are required to apply the same update factor to both groups of hospitals and to units excluded from the prospective payment system.

In addition, even if we were not required by law to apply the same update factor to hospitals both included in and excluded from prospective payment, we believe it would be appropriate to do so. Although certain of the adjustments and factors considered in determining the appropriate update under prospective payment may not apply to excluded hospitals and units, there are other considerations that we believe would justify a zero percentage increase for FY 1986.

Hospitals under the prospective payment system have strong incentives for economy and efficiency and have demonstrated their ability to respond to these incentives. However, since hospitals and units excluded from the prospective payment system are still being reimbursed on a reasonable cost basis, their incentives to increase productivity and cost-effectiveness are not as strong. We believe it is desirable to establish stronger incentives for excluded hospitals and units to reduce costs.

This is particularly important in view of the plans we are pursuing to bring these hospitals and units under the prospective payment system as soon as possible. Because of these plans, it would be appropriate at this time to begin providing excluded hospitals and units with incentives comparable to those experienced by hospitals under the prospective payment system. We expect many excluded hospitals and units will be able to achieve greater efficiency and effectiveness in the delivery of needed services as a response to these limits.

Since the rate of increase ceiling is a limit and not a payment rate, excluded hospitals and units that operate efficiently and maintain per case costs below their target amounts would continue to have a margin for increasing costs. In addition, under the provisions of section 1886(b)(4)(A) of the Act and § 405.463(g), a hospital or unit subject to the rate of increase limit may qualify for exceptions to that limit if it demonstrates that a portion of their costs above the limit is attributable to extraordinary circumstances or abrupt changes in patient mix. The availability of such exceptions affords protection for those hospitals that may exceed their target amount ceiling for reasons other than inefficiency.

C. ProPAC Recommendations

ProPAC made two recommendations concerning excluded hospitals and units. In Recommendation 3, it suggested that separate market basket weights should be used for the group of psychiatric, rehabilitation, and long-term care hospitals and related distinct-part units that are exempt from the prospective payment system, but subject to the TEFRA rate of increase limitation. However, it noted tht separate market basket weights need not be developed for children's hospitals.

We have studied this recommendation, and agree that it is possible to develop such a separate market basket for excluded hospitals and units. However, studies to date show there is little difference in market baskets. In addition, as noted above, we have every intention of incorporating excluded hospitals and units in the prospective payment system in the futue. Therefore, we believe there is not sufficient justification for developing a separate market basket for excluded hospitals and units. In addition, since the law contemplates the same percentage update for hospitals both included in and excluded from the prospective payment system, we do not believe it is appropriate to develop separate market baskets.

This requirement in the law also applies to ProPAC's twelfth recommendation, that hospitals and units excluded from the prospective payment system have the same adjustments applied to the market basket increase factor as would be applied to the prospective payment rate update factor to take into account productivity and technological and scientific advancement.

IV. Tables

This section contains the tables referred to throughout the preamble to this proposed 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)	2,358.59	668.56	2,133.78	507.22
2. Middle Atlantic (PA, NJ, NY)	2,216.72	660.71	2,168.51	514.40
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2,357.90	612.25	1,986.47	427.43
4. East North Central (IL, IN, MI, OH, WI)	2,437.09	712.68	2,017.00	478.79
5. East South Central (AL, KY, MS, TN)	2,234.29	544.93	1,976.60	399.94
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	2,265.11	634.00	1,834.32	410.91
7. West South Central (AR, LA, OK, TX)	2,308.17	599.67	1,852.89	398.47
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2,225.80	636.52	1,826.36	447.21
9. Pacific (AK, CA, HI, OR, WA)	2,209.24	745.34	1,829.99	521.49
10. National	2,310.05	664.44	1,927.32	438.18

TABLE 4a.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
Abilene, TX (Taylor, TX)	.8929
Akron, OH (Portage, OH; Summit, OH)	1.0996
Albany, GA (Dougherty, GA; Lee, GA)	.8120
Albany-Schenectady-Troy, NY (Albany, NY; Greene, NY; Montgomery, NY; Rensselaer, NY; Saratoga, NY; Schenectady, NY)	.9278
Albuquerque, NM (Bernalillo, NM)	1.0996
Alexandria, LA (Rapides, LA)	.9103
Allentown-Bethlehem, PA-NJ (Warren, NJ; Carbon, PA; Lehigh, PA; Northampton, PA)	1.0374
Altoona, PA (Blair, PA)	.9950
Amarillo, TX (Potter, TX; Randall, TX)	.9514
Anaheim-Santa Ana, CA (Orange, CA)	1.2516
Anchorage, AK (Anchorage, AK)	1.5729
Anderson, IN (Madison, IN)	.9178
Anderson, SC (Anderson, SC)	.8306
Ann Arbor, MI (Washtenaw, MI)	1.2503
Anniston, AL (Calhoun, AL)	.8456
Appleton-Oshkosh-Neenah, WI (Calumet, WI; Outagamie, WI; Winnebago, WI)	1.0660
Asheville, NC (Buncombe, NC)	.8780
Athens, GA (Clarke, GA; Jackson, GA; Madison, GA; Oconee, GA)	.8120
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)	.9589
Atlantic City, NJ (Atlantic, NJ; Cape May, NJ)	1.0486
Augusta, GA-SC (Columbia, GA; McDuffie, GA; Richmond, GA; Aiken, SC)	.9527
Aurora-Elgin, IL (Kane, IL; Kendall, IL)	1.0934
Austin, TX (Hays, TX; Travis, TX; Williamson, TX)	1.1096
Bakersfield, CA (Kern, CA)	1.1968

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Baltimore, MD (Anne Arundel, MD; Baltimore, MD; Baltimore City, MD; Carroll, MD; Harford, MD; Howard, MD; Queen Annes, MD)	1.1059
Bangor, ME (Penobscot, ME)	.9128
Baton Rouge, LA (Ascension, LA; East Baton Rouge, LA; Livingston, LA; West Baton Rouge, LA)	.9751
Battle Creek, MI (Calhoun, MI)	1.0224
Beaumont-Port Arthur, TX (Hardin, TX; Jefferson, TX; Orange, TX)	1.0000
Beaver County, PA (Beaver, PA)	1.0834
Bellingham, WA (Whatcom, WA)	1.1382
Benton Harbor, MI (Berrien, MI)	.8842
Bergen-Passaic, NJ (Bergen, NJ; Passaic, NJ)	1.0735
Billings, MT (Yellowstone, MT)	1.0149
Biloxi-Gulfport, MS (Hancock, MS; Harrison, MS)	.8418
Binghamton, NY (Broome, NY; Tioga, NY)	.9489
Birmingham, AL (Blount, AL; Jefferson, AL; Saint Clair, AL; Shelby, AL; Walker, AL)	.9589
Bismarck, ND (Burleigh, ND; Morton, ND)	.9626
Bloomington, IN (Monroe, IN)	.9626
Bloomington-Normal, IL (McLean, IL)	.9763
Boise City, ID (Ada, ID)	1.0498
Boston-Lawrence-Salem-Lowell-Brockton, MA (Essex, MA; Middlesex, MA; Norfolk, MA; Plymouth, MA; Suffolk, MA)	1.1482
Boulder-Longmont, CO (Boulder, CO)	1.1233
Bradenton, FL (Manatee, FL)	.9128
Brazoria, TX (Brazoria, TX)	.8680
Bremerton, WA (Kitsap, WA)	.9738
Bridgeport-Stamford-Norwalk-Danbury, CT (Fairfield, CT)	1.1756
Brownsville-Harlingen, TX (Cameron, TX)	.8904

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Bryan-College Station, TX (Brazos, TX)	.9489
Buffalo, NY (Erie, NY)	1.0473
Burlington, NC (Alamance, NC)	.7858
Burlington, VT (Chittenden, VT; Grand Isle, VT)	1.0050
Canton, OH (Carroll, OH; Stark, OH)	1.0000
Casper, WY (Natrona, WY)	1.0971
Cedar Rapids, IA (Linn, IA)	1.0100
Champaign-Urbana-Rantoul, IL (Champaign, IL)	.9888
Charleston, SC (Berkeley, SC; Charleston, SC; Dorchester, SC)	.8542
Charleston, WV (Kanawha, WV; Putnam, WV)	1.0399
Charlotte-Gastonia-Rock Hill, NC–SC (Cabarrus, NC; Gaston, NC; Lincoln, NC; Mecklenburg, NC; Rowan, NC; Union, NC; York, SC)	.8917
Charlottesville, VA (Albermarle, VA; Charlottesville City, VA; Fluvanna, VA; Greene, VA)	.9278
Chattanooga, TN-GA (Catoosa, GA; Dade, GA; Walker, GA; Hamilton, TN; Marion, TN; Sequatchie, TN)	1.0025
Chicago, IL (Cook, IL; Du Page, IL; McHenry, IL)	1.2291
Chico, CA (Butte, CA)	1.2366
Cincinnati, OH–KY–IN (Dearborn, IN; Boone, KY; Campbell, KY; Kenton, KY; Clermont, OH; Hamilton, OH; Warren, OH)	1.0959
Clarksville-Hopkinsville, TN-KY (Christian, KY; Montgomery, TN)	.8120
Cleveland, OH (Cuyahoga, OH; Geauga, OH; Lake, OH; Medina, OH)	1.1469
Colorado Springs, CO (El Paso, CO)	1.0361
Columbia, MO (Boone, MO)	1.0934
Columbia, SC (Lexington, SC; Richland, SC)	.9091
Columbus, GA-AL (Russell, AL; Chattanoochee, GA; Muscogee, GA)	.7870
Columbus, OH (Delaware, OH; Fairfield, OH; Franklin, OH; Licking, OH; Madison, OH; Pickaway, OH; Union, OH)	.9614
Corpus Christi, TX (Nueces, TX; San Patricio, TX)	.9826
Cumberland, MD-WV (Allegeny, MD; Mineral, WV)	.8929
Dallas, TX (Collin, TX; Dallas, TX; Denton, TX; Ellis, TX; Kaufman, TX; Rockwall, TX)	1.0672
Danville, VA (Danville, City, VA; Pittsylvania, VA)	.8020
Davenport-Rock Island-Moline, IA–IL (Scott, IA; Henry, IL; Rock Island, IL)	1.0573
Dayton-Springfield, OH (Clark, OH; Greene, OH; Miami, OH; Montgomery, OH)	1.0859
Daytona Beach, FL (Volusia, FL)	.9066
Decatur, IL (Macon, IL)	.9514
Denver, CO (Adams, CO; Arapahoe, CO; Denver, CO; Douglas, CO; Jefferson, CO)	1.2765
Des Moines, IA (Dallas, IA; Polk, IA; Warren, IA)	1.0473
Detroit, MI (Lapeer, MI; Livingston, MI; Macomb, MI; Monroe, MI; Oakland, MI; Saint Clair, MI; Wayne, MI)	1.1631
Dothan, AL (Dale, AL; Houston, AL)	.8394
Dubuque, IA (Dubuque, IA)	1.0511
Duluth, MN-WI (St. Louis, MN; Douglas, WI)	.9851
Eau Claire, WI (Chippewa, WI; Eau Claire, WI)	.9427
El Paso, TX (El Paso, TX)	.9365
Elkhart-Goshen, IN (Elkhart, IN)	.9577
Elmira, NY (Chemung, NY)	.9664
Enid, OK (Garfield, OK)	.9552
Erie, PA (Erie PA)	.9913
Eugene-Springfield, OR (Lane, OR)	1.1071
Evansville, IN-KY (Posey, IN; Vanderburgh, IN; Warrick, IN; Henderson, KY)	1.0137
Fargo-Moorhead, ND-MN (Clay, MN; Cass, ND)	1.0560
Fayetteville, NC (Cumberland, NC)	.8269
Fayetteville-Springdale, AR (Washington, AR)	.8020
Flint, MI (Genesee, MI)	1.2005
Florence, AL (Colbert, AL; Lauderdale, AL)	.7833
Florence, SC (Florence, SC)	.7621
Fort Collins-Loveland, CO (Larimor, CO)	1.0760
Fort Lauderdale-Hollywood-Pompano Beach, FL (Broward, FL)	1.1158
Fort Myers-Cape Coral, FL (Lee, FL)	.9465
Fort Pierce, FL (Martin, FL; St. Lucie, FL)	.9178
Fort Smith, AR-OK (Crawford, AR; Sebastian, AR; Sequoyah, OK)	.9166
Fort Walton Beach, FL (Okaloosa, FL)	.8680
Fort Wayne, IN (Allen, IN; De Kalb, IN; Whitley, IN)	.9489
Fort Worth-Arlington, TX (Johnson, TX; Parker, TX; Tarrant, TX)	.9925
Fresno, CA (Fresno, CA)	1.1395
Gadsden, AL (Etowah, AL)	.8705
Gainesville, FL (Alachua, FL; Bradford, FL)	.9564
Galveston-Texas City, TX (Galveston TX)	1.1320
Gary-Hammond, IN (Lake, IN; Porter, IN)	1.0897
Glens Falls, NY (Warren, NY; Washington, NY)	.9527
Grand Forks, ND (Grand Forks, ND)	.9788

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Grand Rapids, MI (Kent, MI; Ottawa, MI)	1.0585
Great Falls, MT (Cascade, MT)	1.0635
Greeley, CO (Weld, CO)	1.0672
Green Bay, WI (Brown, WI)	1.0249
Greensboro-Winston-Salem-High Point, NC (Davidson, NC; Davie, NC; Forsyth, NC; Guilford, NC; Randolph, NC; Stokes, NC; Yadkin, NC)	.9315
Greenville-Spartanburg, SC (Greenville, SC; Pickens, SC; Spartanburg, SC)	.9054
Hagerstown, MD (Washington, MD)	.9514
Hamilton-Middletown, OH (Butler, OH)	1.0137
Harrisburg-Lebanon-Carlisle, PA (Cumberland, PA; Dauphin, PA; Lebanon, PA; Perry, PA)	.9786
Hartford-New Middletown-Britain-Bristol, CT (Hartford, CT; Litchfield, CT; Middlesex, CT; Tolland, - CT)	1.1370
Hickory, NC (Alexander, NC; Burke, NC; Catawba, NC)	.8917
Honolulu, HI (Honolulu, HI)	1.1930
Houma-Thibodaux, LA (Lafourche, LA; Terrebonne, LA)	.9153
Houston, TX (Fort Bend, TX; Harris, TX; Liberty, TX; Montgomery, TX; Waller, TX)	1.0585
Huntington-Ashland, WV-KY-OH (Boyd, KY; Carter, KY; Greenup, KY; Lawrence, OH; Cabell, WV; Wayne, WV)	.9440
Huntsville, AL (Madison, AL)	.8593
Indianapolis, IN (Boone, IN; Hamilton, IN; Hancock, IN; Hendricks, IN; Johnson, IN; Marion, IN; Morgan, IN; Shelby, IN)	1.0511
Iowa City, IA (Johnson, IA)	1.2976
Jackson, MI (Jackson, MI)	1.0125
Jackson, MS (Hinds, MS; Madison, MS; Rankin, MS)	.9278
Jacksonville, FL (Clay, FL; Duval, FL; Nassau, FL; St. Johns, FL)	.9402
Jacksonville, NC (Onslow, NC)	.7906
Janesville-Beloit, WI (Rock, WI)	.9352
Jersey City, NJ (Hudson, NJ)	1.0523
Johnson City-Kingsport-Bristol, TN-VA (Carter, TN; Hawkins, TN; Sullivan, TN; Unicoi, TN; Washington, TN; Bristol City, VA; Scott, VA; Washington, VA)	.8555
Johnstown, PA (Cambria, PA; Somerset, PA)	.9452
Joliet, IL (Grundy, IL; Will, IL)	1.1171
Joplin, MO. (Jasper, MO; Newton, MO)	9128
Kalamazoo, MI. (Kalamazoo, MI)	1.2242
Kankakee, IL. (Kankakee, IL)	.9440
Kansas City, KS–MO. (Johnson, KS; Leavenworth, KS; Miami, KS; Wyandotte, KS; Cass, MO; Clay, MO; Jackson, MO; Lafayette, MO; Platte, MO; Ray, MO)	1.0573
Kenosha, WI. (Kenosha, WI)	1.0785
Killeen-Temple, TX. (Bell, TX; Coryell, TX)	.8780
Knoxville, TN. (Anderson, TN; Blount, TN; Grainger, TN; Jefferson, TN; Knox, TN; Sevier, TN; Union, TN)	.8929
Kokomo, IN. (Howard, IN; Tipton, IN)	.9768
LaCrosse, WI. (LaCrosse, WI)	1.0087
Lafayette, LA. (Lafayette, LA; St. Martin, LA)	1.0037
Lafayette, IN. (Tippecanoe, IN)	.9091
Lake Charles, LA. (Calcasieu, LA)	.9963
Lake County, IL. (Lake, IL)	1.1544
Lakeland-Winter Haven, FL. (Polk, FL)	.8780
Lancaster, PA (Lancaster, PA)	1.0311
Lansing-East Lansing, MI. (Clinton, MI; Eaton, MI; Ingham, MI)	1.0685
Laredo, TX. (Webb, TX)	.8095
Las Cruces, NM. (Dona Ana, NM)	.8892
Las Vegas, NV. (Clark, NV)	1.1171
Lawrence, KS. (Douglas, KS)	1.0100
Lawton, OK. (Comanche, OK)	.9390
Lewiston-Auburn, ME. (Androscoggin ME)	.9352
Lexington-Fayette, KY. (Bourbon, KY; Clark, KY; Fayette, KY; Jessamine, KY; Scott, KY; Woodford, KY)	.9801
Lima, OH. (Allen, OH; Auglaize, OH)	.9798
Lincoln, NE. (Lancaster, NE)	.9639
Little Rock-North Little Rock, AR. (Faulkner, AR; Lonoke, AR; Pulaski, AR; Saline, AR)	1.1046
Longview-Marshall, TX. (Gregg, TX; Harrison TX)	.8344
Lorain-Elyria, OH. (Lorain, OH)	1.0199
Los Angeles-Long Beach, CA. (Los Angeles CA)	1.3188
Louisville, KY–IN. (Clark, IN; Floyd, IN; Harrison, IN; Bullitt, KY; Jefferson, KY; Oldham, KY; Shelby, KY)	1.0000
Lubbock, TX (Lubbock, TX)	1.0050
Lynchburg, VA (Amherst, VA; Campbell, VA; Lynchburg City, VA)	.8194

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Macon-Warner Robins, GA (Bibb, GA; Houston, GA; Jones, GA; Peach, GA)	.9253
Madison, WI (Dane, WI)	1.0622
Manchester-Nashua, NH (Hillsboro, NH; Merrimack, NH)	.9502
Mansfield, OH (Richland, OH)	.9838
McAllen-Edinburg-Mission, TX (Hidalgo, TX)	.8045
Medford, OR (Jackson, OR)	1.0274
Melbourne-Titusville, FL (Brevard, FL)	.9309
Memphis, TN–AR–MS (Crittenden, AR; De Soto, MS; Shelby, TN; Tipton, TN)	1.0573
Miami-Hialeah, FL (Dade, FL)	1.0623
Middlesex-Somerset-Hunterdon, NJ (Hunterdon, NJ; Middlesex, NJ; Somerset, NJ)	1.0598
Midland, TX (Midland, TX)	1.1220
Milwaukee, WI (Milwaukee, WI; Ozaukee, WI; Washington, WI; Waukesha, WI)	1.1320
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)	1.1681
Mobile, AL (Baldwin, AL; Mobile, AL)	.8654
Modesto, CA (Stanislaus, CA)	1.2005
Monmouth-Ocean, NJ (Monmouth, NJ; Ocean, NJ)	.9851
Monroe, LA (Ouachita, LA)	.9265
Montgomery, AL (Autauga, AL; Elmore, AL; Montgomery, AL)	.8804
Muncie, IN (Delaware, IN)	.9698
Muskegon, MI (Muskegon, MI)	.9838
Naples, FL (Collier, FL)	.9714
Nashville, TN (Cheatham, TN; Davidson, TN; Dickson, TN; Robertson, TN; Rutherford, TN; Sumner, TN; Williamson, TN; Wilson, TN)	.9340
Nassau-Suffolk, NY (Nasssau, NY; Suffolk, NY)	1.3275
New Beford-Fall River-Attleboro, MA (Bristol, MA)	.9714
New Haven-West Haven-Waterbury-Meriden, CT (New Haven, CT)	1.1183
New London-Norwich, CT (New London, CT)	1.1021
New Orleans, LA (Jefferson, LA; Orleans, LA; St. Bernard, LA; St. Charles, LA; St. John The Baptist, LA; St. Tammany, LA)	.9265
New York, NY (Bronx, NY; Kings, NY; New York City, NY; Putnam, NY; Queens, NY; Richmond, NY; Rockland, NY; Westchester, NY)	1.3711
Newark, NJ (Essex, NJ; Morris, NJ; Sussex, NJ; Union, NJ)	1.1320
Niagara Falls, NY (Niagara, NY)	.8892
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)	.9614
Oakland, CA (Alameda, CA; Contra Costa, CA)	1.4844
Ocala, FL (Marion, FL)	.8667
Odessa, TX (Ector, TX)	.9539
Oklahoma City, OK (Canadian, OK; Cleveland, OK; Logan, OK; McClain, OK; Oklahoma, OK; Pottawatomie, OK)	1.0847
Olympia, WA (Thurston, WA)	1.0697
Omaha, NE-IA (Pottawattamie, IA; Douglas, NE; Sarpy, NE; Washington, NE)	1.0423
Orange County, NY (Orange, NY)	.9226
Orlando, FL (Orange, FL; Osceola, FL; Seminole, FL)	1.0112
Owensboro, KY (Daviess, KY)	.8182
Oxnard-Ventura, CA (Ventura, CA)	1.2802
Panama City, FL (Bay, FL)	.8294
Parkersburg-Marietta, WV-OH (Washington, OH; Wood, WV)	.9054
Pascagoula, MS (Jackson, MS)	.9601
Pensacola, FL (Escambia, FL; Santa Rosa, FL)	.8667
Peoria, IL (Peoria, IL; Tazewell, IL; Woodford, IL)	1.0498
Philadelphia, PA–NJ (Burlington, NJ; Camden, NJ; Gloucester, NJ; Bucks, PA; Chester, PA; Delaware, PA; Montgomery, PA; Philadelphia, PA)	1.1781
Phoenix, AZ (Maricopa, AZ)	1.0224
Pine Bluff, AR (Jefferson, AR)	.7945
Pittsburgh, PA (Allegheny, PA; Fayette, PA; Washington, PA; Westmoreland, PA)	1.0322
Pittsfield, MA (Berkshire, MA)	1.0162
Portland, ME (Cumberland, ME; Sagadahoc, ME; York, ME)	1.0087
Portland, OR (Clackamas, OR; Multnomah, OR; Washington, OR; Yamhill, OR)	1.1980
Portsmouth-Dover-Rochester, NH (Rockingham, NH; Strafford, NH)	.9303
Poughkeepsie, NY (Dutchess, NY)	1.0152

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Providence-Pawtucket-Woonsocket, RI (Bristol, RI; Kent, RI; Newport, RI; Providence, RI; Statewide, RI; Washington, RI)	1.0423
Provo-Orem, UT (Utah, UT)	.9776
Pueblo, CO (Pueblo, CO)	1.1121
Racine, WI (Racine, WI)	.9925
Raleigh-Durham, NC (Durham, NC; Franklin, NC; Orange, NC; Wake, NC)	.9639
Reading, PA (Berks, PA)	1.0162
Redding, CA (Shasta, CA)	1.2304
Reno, NV (Washoe, NV)	1.1743
Richland-Kennewick, WA (Benton, WA; Franklin, WA)	1.0174
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)	.9527
Riverside-San Bernardino, CA (Riverside, CA; San Bernardino, CA)	1.2416
Roanoke, VA (Botetourt, VA; Roanoke, VA; Roanoke City, VA; Salem City, VA)	.8929
Rochester, MN (Olmsted, MN)	1.0199
Rochester, NY (Livingston, NY; Monroe, NY; Ontario, NY; Orleans, NY; Wayne, NY)	1.0149
Rockford, IL (Boone, IL; Winnebago, IL)	1.1270
Sacramento, CA (Eldorado, CA; Placer, CA; Sacramento, CA; Yolo, CA)	1.2664
Saginaw-Bay City-Midland, MI (Bay, MI; Midland, MI; Saginaw, MI)	1.0984
St. Cloud, MN (Benton, MN; Sherburne, MN; Stearns, MN)	.9938
St. Joseph, MO (Buchanan, MO)	.9415
St. Louis, MO–IL (Clinton, IL; Jersey, IL; Madison, IL; Monroe, IL; St. Clair, IL; Franklin, MO; Jefferson, MO; St. Charles, MO; St. Louis, MO; St. Louis City, MO)	1.0747
Salem, OR (Marion, OR; Polk, OR)	1.0884
Salinas-Seaside-Monterey, CA (Monterey, CA)	1.2478
Salt Lake City-Ogden, UT (Davis, UT; Salt Lake, UT; Weber, UT)	1.0274
San Angelo, TX (Tom Green, TX)	.8655
San Antonio, TX (Bexar, TX; Comal, TX; Guadalupe, TX)	.8879
San Diego, CA (San Diego, CA)	1.3001
San Francisco, CA (Marin, CA; San Francisco, CA; San Mateo, CA)	1.6376
San Jose, CA (Santa Clara, CA)	1.4695
Santa Barbara-Santa Maria-Lompoc, CA (Santa Barbara, CA)	1.1743
Santa Cruz, CA (Santa Cruz, CA)	1.2341
Santa Fe, NM (Los Alamos, NM; Santa Fe, NM)	.9738
Santa Rosa-Petaluma, CA (Sonoma, CA)	1.3014
Sarasota, FL (Sarasota, FL)	.9564
Savannah, GA (Chatham, GA; Effingham, GA)	.8842
Scranton-Wilkes Barre, PA (Columbia, PA; Lackawanna, PA; Luzerne, PA; Monroe, PA; Wyoming, PA)	.9900
Seattle, WA (King, WA; Snohomish, WA)	1.1494
Sharon, PA (Mercer, PA)	.9676
Sheboygan, WI (Sheboygan, WI)	.9813
Sherman-Denison, TX (Grayson, TX)	.8555
Shreveport, LA (Bossier, LA; Caddo, LA)	.9539
Sioux City, IA–NE (Woodbury, IA; Dakota, NE)	.9988
Sioux Falls, SD (Minnehaha, SD)	1.0137
South Bend-Mishawaka, IN (St. Joseph, IN)	1.0012
Spokane, WA (Spokane, WA)	1.1469
Springfield, IL (Menard, IL; Sangamon, IL)	1.0585
Springfield, MO (Christian, MO; Greene, MO)	.9788
Springfield, MA (Hampden, MA; Hampshire, MA)	.9988
State College, PA (Centre, PA)	1.0685
Steubenville-Weirton, OH–WV (Jefferson, OH; Brooke, WV; Hancock, WV)	.9577
Stockton, CA (San Joaquin, CA)	1.2765
Syracuse, NY (Madison, NY; Onondaga, NY; Oswego, NY)	1.0386
Tacoma, WA (Pierce, WA)	1.0971
Tallahassee, FL (Gadsden, FL; Leon, FL)	.9440
Tampa-St. Petersburg-Clearwater, FL (Hernando, FL; Hillsborough, FL; Pasco, FL; Pinellas, FL)	.9751
Terre Haute, IN (Clay, IN; Vigo, IN)	.8506
Texarkana-TX-Texarkana, AR (Miller, AR; Bowie, TX)	.8580
Toledo, OH (Fulton, OH; Lucas, OH; Wood, OH)	1.2167
Topeka, KS (Shawnee, KS)	1.0548
Trenton, NJ (Mercer, NJ)	1.0237
Tucson, AZ (Pima, AZ)	1.0012
Tulsa, OK (Creeks, OK; Osage, OK; Rogers, OK; Tulsa, OK; Wagoner, OK)	1.0050
Tuscaloosa, AL (Tuscaloosa, AL)	1.0087
Tyler, TX (Smith, TX)	.9963
Utica-Rome, NY (Herkimer, NY; Oneida, NY)	.8667
Vallejo-Fairfield-Napa, CA (Napa, CA; Solano, CA)	1.3288
Vancouver, WA (Clark, WA)	1.1569
Victoria, TX (Victoria, TX)	.8144
Vineland-Millville-Bridgeton, NJ (Cumberland, NJ)	.9851
Visalia-Tulare-Portervile, CA (Tulare, CA)	1.0560
Waco, TX (McLennan, TX)	.9041
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)	1.1868
Waterloo-Cedar Falls, IA (Black Hawk, IA; Bremer, IA)	.9913
Wausau, WI (Marathon, WI)	.9788
West Palm Beach-Boca Raton-Delray Beach, FL (Palm Beach, FL)	.9900
Wheeling, WV–OH (Belmont, OH; Marshall, WV; Ohio, WV)	.9689
Wichita, KS (Butler, KS; Sedgwick, KS)	1.1494
Wichita Falls, TX (Wichita, TX)	.8705
Williamsport, PA (Lycoming, PA)	.8979
Wilmington, DE-NJ-MD (New Castle, DE; Cecil, MD; Salem, NJ)	1.0511
Wilmington, NC (New Hanover, NC)	.9514
Worcester-Fitchburg-Leominster, MA (Worcester, MA)	.9950
Yakima, WA (Yakima, WA)	1.0311
York, PA (Adams, PA; York, PA)	.9776
Youngstown-Warren, OH (Mahoning, OH; Trumbull, OH)	1.0399
Yuba City, CA (Sutter, CA; Yuba, CA)	1.0374

TABLE 4b.—WAGE INDEX FOR RURAL AREAS

Non-urban area	Wage index
Alabama	.7435
Alaska	1.4869
Arizona	.9128
Arkansas	.7646
California	1.1370
Colorado	.9253
Connecticut	1.0374
Delaware	.8580
Florida	.8742
Georgia	.7721
Hawaii	1.0075
Idaho	.9054
Illinois	.8842
Indiana	.8618
Iowa	.8655
Kansas	.8418
Kentucky	.7970
Louisiana	.8543
Maine	.8580
Maryland	.8705
Massachusetts	.0511
Michigan	.9514
Minnesota	.8717
Mississippi	.7646
Missouri	.8257
Montana	.9078
Nebraska	.8244
Nevada	1.0710
New Hampshire	.9178
New Jersey*	
New Mexico	.9141
New York	.8755
North Carolina	.8082
North Dakota	.8991
Ohio	.9029
Oklahoma	.8418
Oregon	1.0697
Pennsylvania	.9352
Rhode Island*	
South Carolina	.7771
South Dakota	.8394
Tennessee	.7684
Texas	.8120
Utah	.9427
Vermont	.8817
Virginia	.8157
Washington	1.0167
West Virginia	.8742
Wisconsin	.8929
Wyoming	.9664

*All counties within the State are classified urban.

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TABLE 5

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
1	1 SURG		CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.5526	16.0	33
2	1 SURG		CRANIOTOMY FOR TRAUMA AGE >17	3.7716	13.4	30
3	1 SURG	*	CRANIOTOMY AGE <18	2.9163	12.7	30
4	1 SURG		SPINAL PROCEDURES	2.7305	14.9	32
5	1 SURG		EXTRACRANIAL VASCULAR PROCEDURES	1.6572	7.9	25
6	1 SURG		CARPAL TUNNEL RELEASE	.4105	2.3	7
7	1 SURG		PERIPH + CRANIAL NERVE + OTHER NERV SYST PROC AGE >69 +/OR C.C.	1.3087	5.9	23
8	1 SURG		PERIPH + CRANIAL NERVE + OTHER NERV SYST PROC AGE <70 W/O C.C.	.7303	3.6	17
9	1 MED		SPINAL DISORDERS + INJURIES	1.4319	6.3	25
10	1 MED		NERVOUS SYSTEM NEOPLASMS AGE >69 AND/OR C.C.	1.1342	7.7	25
11	1 MED		NERVOUS SYSTEM NEOPLASMS AGE <70 W/O C.C.	.8333	6.0	23
12	1 MED		DEGENERATIVE NERVOUS SYSTEM DISORDERS	1.0102	7.6	25
13	1 MED		MULTIPLE SCLEROSIS + CEREBELLAR ATAXIA	.9582	7.8	25
14	1 MED		SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.3148	8.5	26
15	1 MED		TRANSIENT ISCHEMIC ATTACK AND PRECEREBRAL OCCLUSIONS	.6262	4.6	19
16	1 MED		NONSPECIFIC CEREBROVASCULAR DISORDERS WITH C.C.	.9071	6.7	24
17	1 MED		NONSPECIFIC CEREBROVASCULAR DISORDERS W/O C.C.	.6641	5.6	23
18	1 MED		CRANIAL + PERIPHERAL NERVE DISORDERS AGE >69 AND/OR C.C.	.7430	5.8	23
19	1 MED		CRANIAL + PERIPHERAL NERVE DISORDERS AGE <70 W/O C.C.	.6347	4.9	22
20	1 MED		NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.3675	7.7	25
21	1 MED		VIRAL MENINGITIS	1.3032	7.8	25
22	1 MED		HYPERTENSIVE ENCEPHALOPATHY	.7070	5.0	20
23	1 MED		NONTRAUMATIC STUPOR + COMA	1.1319	5.2	22
24	1 MED		SEIZURE + HEADACHE AGE >69 AND/OR C.C.	.7615	5.0	22
25	1 MED		SEIZURE + HEADACHE AGE 18-69 W/O C.C.	.5566	4.0	18
26	1 MED		SEIZURE + HEADACHE AGE 0-17	.6624	2.8	15
27	1 MED		TRAUMATIC STUPOR + COMA, COMA >1 HR	1.5041	4.6	22
28	1 MED		TRAUMATIC STUPOR + COMA, COMA <1 HR AGE >69 AND/OR C.C.	.9338	5.0	22
29	1 MED		TRAUMATIC STUPOR + COMA <1 HR AGE 18-69 W/O C.C.	.6469	3.6	21
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.	.5396	3.8	20
32	1 MED		CONCUSSION AGE 18-69 W/O C.C.	.4058	2.8	13
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.	.9726	6.0	23
35	1 MED		OTHER DISORDERS OF NERVOUS SYSTEM AGE <70 W/O C.C.	.7453	4.5	22

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TABLE 5

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
36	2	SURG	RETINAL PROCEDURES	.7145	4.1	12
37	2	SURG	ORBITAL PROCEDURES	.6645	3.2	12
38	2	SURG	PRIMARY IRIS PROCEDURES	.3992	2.4	8
39	2	SURG	LENS PROCEDURES	.5766	2.1	4
40	2	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.4150	2.1	6
41	2	SURG *	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	.3658	1.6	4
42	2	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS + LENS	.6579	3.0	10
43	2	MED	HYPHEMA	.3429	3.6	13
44	2	MED	ACUTE MAJOR EYE INFECTIONS	.6466	5.9	21
45	2	MED	NEUROLOGICAL EYE DISORDERS	.5449	3.6	14
46	2	MED	OTHER DISORDERS OF THE EYE AGE >17 WITH C.C.	.6006	3.6	21
47	2	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O C.C.	.4240	2.5	11
48	2	MED *	OTHER DISORDERS OF THE EYE AGE 0-17	.4018	2.9	13
49	3	SURG	MAJOR HEAD + NECK PROCEDURES	2.8612	12.9	30
50	3	SURG	SIALOADENECTOMY	.7065	3.7	11
51	3	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.5948	3.3	10
52	3	SURG	CLEFT LIP + PALATE REPAIR	.7110	3.5	13
53	3	SURG	SINUS + MASTOID PROCEDURES AGE >17	.6199	3.0	10
54	3	SURG *	SINUS + MASTOID PROCEDURES AGE 0-17	.6689	3.2	11
55	3	SURG	MISCELLANEOUS EAR, NOSE + THROAT PROCEDURES	.4354	2.1	6
56	3	SURG	RHINOPLASTY	.4415	2.3	7
57	3	SURG	T+A PROC EXCEPT TONSILLECTOMY +/OR ADENOIDECTOMY ONLY, AGE >17	.7857	3.6	20
58	3	SURG *	T+A PROC EXCEPT TONSILLECTOMY +/OR ADENOIDECTOMY ONLY, AGE 0-17	.3098	1.5	3
59	3	SURG	TONSILLECTOMY AND/OR ADENOIDECTOMY ONLY AGE >17	.4179	2.4	7
60	3	SURG *	TONSILLECTOMY AND/OR ADENOIDECTOMY ONLY AGE 0-17	.2616	1.5	3
61	3	SURG	MYRINGOTOMY WITH TUBE INSERTION AGE >17	.4335	2.0	9
62	3	SURG *	MYRINGOTOMY WITH TUBE INSERTION AGE 0-17	.3089	1.3	3
63	3	SURG	OTHER EAR, NOSE + THROAT O.R. PROCEDURES	1.1446	5.0	22
64	3	MED	EAR, NOSE + THROAT MALIGNANCY	.9766	4.7	22
65	3	MED	DYSEQUILIBRIUM	.4527	3.8	14
66	3	MED	EPISTAXIS	.4166	3.3	13
67	3	MED	EPIGLOTTITIS	.9418	4.8	21
68	3	MED	OTITIS MEDIA + URI AGE >69 AND/OR C.C.	.6112	5.1	17
69	3	MED	OTITIS MEDIA + URI AGE 18-69 W/O C.C.	.5059	4.1	14
70	3	MED	OTITIS MEDIA + URI AGE 0-17	.5529	3.5	14

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TABLE 5

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
71	3 MED		LARYNGOTRACHEITIS	.6405	4.5	17
72	3 MED		NASAL TRAUMA + DEFORMITY	.5286	3.5	19
73	3 MED		OTHER EAR, NOSE + THROAT DIAGNOSES AGE >17	.6025	3.4	17
74	3 MED	*	OTHER EAR, NOSE + THROAT DIAGNOSES AGE 0-17	.3427	2.1	9
75	4 SURG		MAJOR CHEST PROCEDURES	2.9497	13.3	30
76	4 SURG		OTHER RESPIRATORY SYSTEM O.R. PROCEDURES WITH C.C.	2.4805	10.1	27
77	4 SURG		OTHER RESPIRATORY SYSTEM O.R. PROCEDURES W/O C.C.	1.6525	6.9	24
78	4 MED		PULMONARY EMBOLISM	1.4904	9.5	27
79	4 MED		RESPIRATORY INFECTIONS + INFLAMMATIONS AGE >69 AND/OR C.C.	1.9337	9.6	27
80	4 MED		RESPIRATORY INFECTIONS + INFLAMMATIONS AGE 18-69 W/O C.C.	1.4201	6.4	25
81	4 MED	*	RESPIRATORY INFECTIONS + INFLAMMATIONS AGE 0-17	.8652	6.1	23
82	4 MED		RESPIRATORY NEOPLASMS	1.1297	6.5	24
83	4 MED		MAJOR CHEST TRAUMA AGE >69 AND/OR C.C.	.8352	6.6	24
84	4 MED		MAJOR CHEST TRAUMA AGE <70 W/O C.C.	.6028	4.7	20
85	4 MED		PLEURAL EFFUSION AGE >69 AND/OR C.C.	1.1227	7.2	24
86	4 MED		PLEURAL EFFUSION AGE <70 W/O C.C.	.8798	5.8	23
87	4 MED		PULMONARY EDEMA + RESPIRATORY FAILURE	1.7961	7.0	24
88	4 MED		CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.0806	6.6	24
89	4 MED		SIMPLE PNEUMONIA + PLEURISY AGE >69 AND/OR C.C.	1.1765	7.5	25
90	4 MED		SIMPLE PNEUMONIA + PLEURISY AGE 18-69 W/O C.C.	.8929	6.2	21
91	4 MED		SIMPLE PNEUMONIA + PLEURISY AGE 0-17	.7897	4.5	19
92	4 MED		INTERSTITIAL LUNG DISEASE AGE >69 AND/OR C.C.	1.1037	6.7	24
93	4 MED		INTERSTITIAL LUNG DISEASE AGE <70 W/O C.C.	.8728	5.4	22
94	4 MED		PNEUMOTHORAX AGE >69 AND/OR C.C.	1.3048	7.6	25
95	4 MED		PNEUMOTHORAX AGE <70 W/O C.C.	.8660	5.7	23
96	4 MED		BRONCHITIS + ASTHMA AGE >69 AND/OR C.C.	.8486	6.0	20
97	4 MED		BRONCHITIS + ASTHMA AGE 18-69 W/O C.C.	.7155	5.1	17
98	4 MED		BRONCHITIS + ASTHMA AGE 0-17	.7248	3.7	12
99	4 MED		RESPIRATORY SIGNS + SYMPTOMS AGE >69 AND/OR C.C.	.8071	4.6	21
100	4 MED		RESPIRATORY SIGNS + SYMPTOMS AGE <70 W/O C.C.	.6352	3.6	16
101	4 MED		OTHER RESPIRATORY DIAGNOSES AGE >69 AND/OR C.C.	.8448	5.5	23
102	4 MED		OTHER RESPIRATORY DIAGNOSES AGE <70	.6617	4.2	20
103	5 SURG		HEART TRANSPLANT	.0000		
104	5 SURG		CARDIAC VALVE PROCEDURE WITH PUMP + WITH CARDIAC CATH	7.1333	17.6	35
105	5 SURG		CARDIAC VALVE PROCEDURE WITH PUMP + W/O CARDIAC CATH	6.3223	14.9	32

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DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
106	5	SURG	CORONARY BYPASS WITH CARDIAC CATH	5.3018	14.6	32
107	5	SURG	CORONARY BYPASS W/O CARDIAC CATH	4.6824	12.7	30
108	5	SURG	CARDIOTHOR PROC,EXCEPT VALVE + CORONARY BYPASS,WITH PUMP	5.3971	11.2	28
109	5	SURG	CARDIOTHORACIC PROCEDURES W/O PUMP	4.3085	8.9	26
110	5	SURG	MAJOR RECONSTRUCTIVE VASCULAR PROCEDURES AGE >69 AND/OR C.C.	3.2807	12.9	30
111	5	SURG	MAJOR RECONSTRUCTIVE VASCULAR PROCEDURES AGE <70 W/O C.C.	2.4773	11.1	28
112	5	SURG	VASCULAR PROCEDURES EXCEPT MAJOR RECONSTRUCTION	2.2247	8.1	25
113	5	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB + TOE	2.4958	16.8	34
114	5	SURG	UPPER LIMB + TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.8814	11.8	29
115	5	SURG	PERMANENT CARDIAC PACEMAKER IMPLANT WITH AMI OR CHF	4.1754	13.8	31
116	5	SURG	PERMANENT CARDIAC PACEMAKER IMPLANT W/O AMI OR CHF	2.9808	7.7	25
117	5	SURG	CARDIAC PACEMAKER REPLACE + REVIS EXC PULSE GEN REPL ONLY	1.4658	4.8	20
118	5	SURG	CARDIAC PACEMAKER PULSE GENERATOR REPLACEMENT ONLY	1.8835	3.4	14
119	5	SURG	VEIN LIGATION + STRIPPING	.9238	5.6	23
120	5	SURG	OTHER O.R. PROCEDURES ON THE CIRCULATORY SYSTEM	2.2700	11.2	28
121	5	MED	CIRCULATORY DISORDERS WITH AMI + C.V. COMP. DISCH. ALIVE	1.7771	10.3	27
122	5	MED	CIRCULATORY DISORDERS WITH AMI W/O C.V. COMP. DISCH. ALIVE	1.3399	8.8	26
123	5	MED	CIRCULATORY DISORDERS WITH AMI, EXPIRED	1.3549	3.0	20
124	5	MED	CIRCULATORY DISORDERS EXC AMI,WITH CARD CATH + COMPLEX DIAG	1.2509	5.0	22
125	5	MED	CIRCULATORY DISORDERS EXC AMI,WITH CARD CATH W/O COMPLEX DIAG	.7353	2.9	11
126	5	MED	ACUTE + SUBACUTE ENDOCARDITIS	3.0006	18.2	35
127	5	MED	HEART FAILURE + SHOCK	1.0136	6.7	24
128	5	MED	DEEP VEIN THROMBOPHLEBITIS	.8483	8.6	24
129	5	MED	CARDIAC ARREST, UNEXPLAINED	1.7386	3.8	21
130	5	MED	PERIPHERAL VASCULAR DISORDERS AGE >69 AND/OR C.C.	.8163	5.6	23
131	5	MED	PERIPHERAL VASCULAR DISORDERS AGE <70 W/O C.C.	.6661	4.4	21
132	5	MED	ATHEROSCLEROSIS AGE >69 AND/OR C.C.	.8090	5.3	22
133	5	MED	ATHEROSCLEROSIS AGE <70 W/O C.C.	.7087	3.8	16
134	5	MED	HYPERTENSION	.6394	5.1	20
135	5	MED	CARDIAC CONGENITAL + VALVULAR DISORDERS AGE >69 AND/OR C.C.	.8985	5.2	22
136	5	MED	CARDIAC CONGENITAL + VALVULAR DISORDERS AGE 18-69 W/O C.C.	.7360	3.8	17
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.	.8174	4.9	21
139	5	MED	CARDIAC ARRHYTHMIA + CONDUCTION DISORDERS AGE <70 W/O C.C.	.6575	3.5	16
140	5	MED	ANGINA PECTORIS	.6951	4.6	16

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DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
141	5 MED		SYNCOPE + COLLAPSE AGE >69 AND/OR C.C.	.6226	4.4	17
142	5 MED		SYNCOPE + COLLAPSE AGE <70 W/O C.C.	.5376	3.6	14
143	5 MED		CHEST PAIN	.5943	3.5	13
144	5 MED		OTHER CIRCULATORY DIAGNOSES WITH C.C.	1.1200	6.2	23
145	5 MED		OTHER CIRCULATORY DIAGNOSES W/O C.C.	.8502	5.0	22
146	6 SURG		RECTAL RESECTION AGE >69 AND/OR C.C.	3.0595	16.5	34
147	6 SURG		RECTAL RESECTION AGE <70 W/O C.C.	2.2998	14.0	31
148	6 SURG		MAJOR SMALL + LARGE BOWEL PROCEDURES AGE >69 AND/OR C.C.	2.9151	15.1	32
149	6 SURG		MAJOR SMALL + LARGE BOWEL PROCEDURES AGE <70 W/O C.C.	2.1111	12.6	30
150	6 SURG		PERITONEAL ADHESIOLYSIS AGE >69 AND/OR C.C.	2.3371	12.6	30
151	6 SURG		PERITONEAL ADHESIOLYSIS AGE <70 W/O C.C.	1.6190	10.1	27
152	6 SURG		MINOR SMALL + LARGE BOWEL PROCEDURES AGE >69 AND/OR C.C.	1.4162	8.5	26
153	6 SURG		MINOR SMALL + LARGE BOWEL PROCEDURES AGE <70 W/O C.C.	1.1096	7.3	24
154	6 SURG		STOMACH, ESOPHAGEAL + DUODENAL PROCEDURES AGE >69 AND/OR C.C.	2.6479	11.3	28
155	6 SURG		STOMACH, ESOPHAGEAL + DUODENAL PROCEDURES AGE 18-69 W/O C.C.	1.7601	8.9	26
156	6 SURG	*	STOMACH, ESOPHAGEAL + DUODENAL PROCEDURES AGE 0-17	.8382	6.0	20
157	6 SURG		ANAL AND STOMAL PROCEDURES AGE >69 AND/OR C.C.	.7329	4.3	21
158	6 SURG		ANAL AND STOMAL PROCEDURES AGE <70 W/O C.C.	.5571	3.9	14
159	6 SURG		HERNIA PROCEDURES EXCEPT INGUINAL + FEMORAL AGE >69 AND/OR C.C.	1.0035	6.3	22
160	6 SURG		HERNIA PROCEDURES EXCEPT INGUINAL + FEMORAL AGE 18-69 W/O C.C.	.7345	5.0	16
161	6 SURG		INGUINAL + FEMORAL HERNIA PROCEDURES AGE >69 AND/OR C.C.	.6569	4.4	14
162	6 SURG		INGUINAL + FEMORAL HERNIA PROCEDURES AGE 18-69 W/O C.C.	.5304	3.6	13
163	6 SURG		HERNIA PROCEDURES AGE 0-17	.9064	4.1	17
164	6 SURG		APPENDECTOMY WITH COMPLICATED PRINC. DIAG AGE>69 AND/OR C.C.	2.0821	10.7	27
165	6 SURG		APPENDECTOMY WITH COMPLICATED PRINC. DIAG AGE <70 W/O C.C.	1.4516	8.4	19
166	6 SURG		APPENDECTOMY W/O COMPLICATED PRINC. DIAG AGE >69 AND/OR C.C.	1.3678	7.5	23
167	6 SURG		APPENDECTOMY W/O COMPLICATED PRINC. DIAG AGE <70 W/O C.C.	.9005	5.3	14
168	6 SURG		PROCEDURES ON THE MOUTH AGE >69 AND/OR C.C.	.9421	4.1	21
169	6 SURG		PROCEDURES ON THE MOUTH AGE <70 W/O C.C.	.6680	3.0	12
170	6 SURG		OTHER DIGESTIVE SYSTEM PROCEDURES AGE >69 AND/OR C.C.	2.7543	12.2	29
171	6 SURG		OTHER DIGESTIVE SYSTEM PROCEDURES AGE <70 W/O C.C.	2.3060	9.6	27
172	6 MED		DIGESTIVE MALIGNANCY AGE >69 AND/OR C.C.	1.0780	6.7	24
173	6 MED		DIGESTIVE MALIGNANCY AGE <70 W/O C.C.	.9650	5.3	22
174	6 MED		G.I. HEMORRHAGE AGE >69 AND/OR C.C.	.9095	5.8	23
175	6 MED		G.I. HEMORRHAGE AGE <70 W/O C.C.	.7123	4.7	18

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DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
176	6	MED	COMPLICATED PEPTIC ULCER	.9333	5.3	23
177	6	MED	UNCOMPLICATED PEPTIC ULCER >69 AND/OR C.C.	.6642	5.4	18
178	6	MED	UNCOMPLICATED PEPTIC ULCER <70 W/O C.C.	.5624	4.6	15
179	6	MED	INFLAMMATORY BOWEL DISEASE	.9896	7.0	24
180	6	MED	G.I. OBSTRUCTION AGE >69 AND/OR C.C.	.7625	5.4	22
181	6	MED	G.I. OBSTRUCTION AGE <70 W/O C.C.	.5872	4.5	18
182	6	MED	ESOPHAGITIS,GASTROENT.* MISC. DIGEST. DIS AGE >69 +/OR C.C.	.6036	4.7	16
183	6	MED	ESOPHAGITIS,GASTROENT.* MISC. DIGEST. DIS AGE 18-69 W/O C.C.	.5135	4.0	15
184	6	MED	ESOPHAGITIS, GASTROENTERITIS + MISC. DIGEST. DISORDERS AGE 0-17	.5426	2.8	14
185	6	MED	DENTAL + ORAL DIS. EXC EXTRACTIONS + RESTORATIONS,AGE >17	.7160	4.3	21
186	6	MED *	DENTAL + ORAL DIS. EXC EXTRACTIONS + RESTORATIONS,AGE 0-17	.4112	2.9	11
187	6	MED	DENTAL EXTRACTIONS + RESTORATIONS	.4225	2.3	7
188	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >69 AND/OR C.C.	.7110	4.3	21
189	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 18-69 W/O C.C.	.5312	3.3	17
190	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	.9611	4.5	22
191	7	SURG	MAJOR PANCREAS, LIVER + SHUNT PROCEDURES	4.4168	17.9	35
192	7	SURG	MINOR PANCREAS, LIVER + SHUNT PROCEDURES	3.9294	16.2	33
193	7	SURG	BILIARY TRACT PROC EXC TOT CHOLECYSTECTOMY AGE >69 +/OR C.C.	2.8129	15.6	33
194	7	SURG	BILIARY TRACT PROC EXC TOT CHOLECYSTECTOMY AGE <70 W/O C.C.	2.1151	12.4	29
195	7	SURG	TOTAL CHOLECYSTECTOMY WITH C.D.E. AGE >69 AND/OR C.C.	2.2596	13.1	30
196	7	SURG	TOTAL CHOLECYSTECTOMY WITH C.D.E. AGE <70 W/O C.C.	1.6131	10.3	22
197	7	SURG	TOTAL CHOLECYSTECTOMY W/O C.D.E. AGE >69 AND/OR C.C.	1.7061	10.5	26
198	7	SURG	TOTAL CHOLECYSTECTOMY W/O C.D.E. AGE <70 W/O C.C.	1.1463	8.0	17
199	7	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.3479	14.1	31
200	7	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2.5679	10.8	28
201	7	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.5367	8.8	26
202	7	MED	CIRRHOSIS + ALCOHOLIC HEPATITIS	1.1653	7.7	25
203	7	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.0373	6.8	24
204	7	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	.9747	6.4	23
205	7	MED	DISORDERS OF LIVER EXC MALIG,CIRR,ALC HEPA AGE >69 AND/OR C.C.	1.0733	6.7	24
206	7	MED	DISORDERS OF LIVER EXC MALIG,CIPR,ALC HEPA AGE <70 W/O C.C.	.7752	5.0	22
207	7	MED	DISORDERS OF THE BILIARY TRACT AGE >69 AND/OR C.C.	.7820	5.4	22
208	7	MED	DISORDERS OF THE BILIARY TRACT AGE <70 W/O C.C.	.5851	4.0	16
209	8	SURG	MAJOR JOINT AND LIMB REATTACHMENT PROCEDURES	2.4018	14.4	31
210	8	SURG	HIP + FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >69 AND/OR C.C.	2.0409	14.7	32

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TABLE 5

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
211	8	SURG	HIP + FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 18-69 W/O C.C.	1.7951	12.7	30
212	8	SURG	HIP + FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.6990	8.8	24
213	8	SURG	AMPUTATIONS FOR MUSCULOSKELETAL SYSTEM + CONN. TISSUE DISORDERS	2.0969	12.6	30
214	8	SURG	BACK + NECK PROCEDURES AGE >69 AND/OR C.C.	1.6774	13.1	30
215	8	SURG	BACK + NECK PROCEDURES AGE <70 W/O C.C.	1.4374	10.2	27
216	8	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM + CONNECTIVE TISSUE	1.5472	8.8	26
217	8	SURG	WND DEBRID + SKN GRFT EXC HAND,FOR MUSCSKELETAL + CONN.TISS.DIS	2.1262	10.3	27
218	8	SURG	LOWER EXTREM + HUMER PROC EXC HIP,FOOT,FEMUR AGE >69 +/OR C.C.	1.3806	8.8	26
219	8	SURG	LOWER EXTREM + HUMER PROC EXC HIP,FOOT,FEMUR AGE 18-69 W/O C.C.	1.0526	6.7	22
220	8	SURG *	LOWER EXTREM + HUMER PROC EXC HIP,FOOT,FEMUR AGE 0-17	.9242	5.3	22
221	8	SURG	KNEE PROCEDURES AGE >69 AND/OR C.C.	.9801	4.7	22
222	8	SURG	KNEE PROCEDURES AGE <70 W/O C.C.	.7250	3.4	15
223	8	SURG	UPPER EXTREMITY PROC EXC HUMERUS + HAND AGE >69 AND/OR C.C.	.9703	5.2	22
224	8	SURG	UPPER EXTREMITY PROC EXC HUMERUS + HAND AGE <70 W/O C.C.	.7918	4.1	15
225	8	SURG	FOOT PROCEDURES	.6590	3.9	13
226	8	SURG	SOFT TISSUE PROCEDURES AGE >69 AND/OR C.C.	.9545	5.3	22
227	8	SURG	SOFT TISSUE PROCEDURES AGE <70 W/O C.C.	.6780	3.6	16
228	8	SURG	GANGLION (HAND) PROCEDURES	.3691	1.9	5
229	8	SURG	HAND PROCEDURES EXCEPT GANGLION	.6238	2.9	12
230	8	SURG	LOCAL EXCISION + REMOVAL OF INT FIX DEVICES OF HIP + FEMUR	1.0405	6.0	23
231	8	SURG	LOCAL EXCISION + REMOVAL OF INT FIX DEVICES EXCEPT HIP + FEMUR	.7545	3.8	19
232	8	SURG	ARTHROSCOPY	.6640	3.1	14
233	8	SURG	OTHER MUSCULOSKELET SYS + CONN TISS O.R. PROC AGE >69 +/OR C.C.	1.3734	8.1	25
234	8	SURG	OTHER MUSCULOSKELET SYS + CONN TISS O.R. PROC AGE <70 W/O C.C.	.9409	5.3	22
235	8	MED	FRACTURES OF FEMUR	1.4357	10.3	27
236	8	MED	FRACTURES OF HIP + PELVIS	1.0823	8.8	26
237	8	MED	SPRAINS, STRAINS, + DISLOCATIONS OF HIP, PELVIS + THIGH	.6133	5.5	23
238	8	MED	OSTEOMYELITIS	1.6319	11.0	28
239	8	MED	PATHOLOGICAL FRACTURES + MUSCULOSKELETAL + CONN.TISS.MALIGNANCY	.9280	7.5	25
240	8	MED	CONNECTIVE TISSUE DISORDERS AGE >69 AND/OR C.C.	.9035	7.2	24
241	8	MED	CONNECTIVE TISSUE DISORDERS AGE <70 W/O C.C.	.7525	6.2	23
242	8	MED	SEPTIC ARTHRITIS	1.4540	9.7	27
243	8	MED	MEDICAL BACK PROBLEMS	.6902	6.2	23
244	8	MED	BONE DISEASES + SEPTIC ARTHROPATHY AGE >69 AND/OR C.C.	.6783	6.1	23
245	8	MED	BONE DISEASES + SEPTIC ARTHROPATHY AGE <70 W/O C.C.	.6532	5.1	22

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TABLE 5

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
246	8 MED		NON-SPECIFIC ARTHROPATHIES	.6007	5.4	21
247	8 MED		SIGNS + SYMPTOMS OF MUSCULOSKELETAL SYSTEM + CONN TISSUE	.5817	4.7	21
248	8 MED		TENDONITIS, MYOSITIS + BURSITIS	.5906	4.8	20
249	8 MED		AFTERCARE, MUSCULOSKELETAL SYSTEM + CONNECTIVE TISSUE	.7681	5.5	23
250	8 MED		FX,SPRNS,STRNS + DISL OF FOREARM,HAND,FOOT AGE >69 +/OR C.C.	.5186	3.8	20
251	8 MED		FX,SPRNS,STRNS + DISL OF FOREARM,HAND,FOOT AGE 18-69 W/O C.C.	.4042	2.5	11
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.	.6355	5.4	22
254	8 MED		FX,SPRNS,STRNS + DISL OF UPARM,LOWLEG EX FOOT AGE 18-69 W/O C.C.	.4953	4.0	20
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	.7107	4.9	22
257	9 SURG		TOTAL MASTECTOMY FOR MALIGNANCY AGE >69 AND/OR C.C.	1.0809	7.8	19
258	9 SURG		TOTAL MASTECTOMY FOR MALIGNANCY AGE <70 W/O C.C.	.9806	6.9	16
259	9 SURG		SUBTOTAL MASTECTOMY FOR MALIGNANCY AGE >69 AND/OR C.C.	.8644	4.9	22
260	9 SURG		SUBTOTAL MASTECTOMY FOR MALIGNANCY AGE <70	.6773	3.6	15
261	9 SURG		BREAST PROC FOR NON-MALIG EXCEPT BIOPSY + LOC EXC	.6223	3.4	11
262	9 SURG		BREAST BIOPSY + LOCAL EXCISION FOR NON-MALIGNANCY	.4301	2.4	6
263	9 SURG		SKIN-GRAFTS AND/OR DEBRID ULCER OR CELLULITIS AGE >69 AND/OR C.C.	2.3770	16.0	33
264	9 SURG		SKIN-GRAFTS AND/OR DEBRID ULCER OR CELLULITIS AGE <70 W/O C.C.	2.1879	14.9	32
265	9 SURG		SKIN-GRAFTS AND/OR DEBRID EXCEPT ULCER OR CELLULITIS WITH C.C.	1.3468	7.3	24
266	9 SURG		SKIN-GRAFTS AND/OR DEBRID EXCEPT ULCER OR CELLULITIS W/O C.C.	.7208	4.0	21
267	9 SURG		PERIANAL + PILONIDAL PROCEDURES	.6270	4.0	16
268	9 SURG		SKIN,SUBCUTANEOUS TISSUE + BREAST PLASTIC PROCEDURES	.5748	2.8	12
269	9 SURG		OTHER SKIN, SUBCUT TISS + BREAST O.R. PROC AGE >69 +/OR C.C.	1.1155	5.4	22
270	9 SURG		OTHER SKIN, SUBCUT TISS + BREAST O.R. PROC AGE <70 W/O C.C.	.7667	3.8	21
271	9 MED		SKIN ULCERS	1.2427	10.0	27
272	9 MED		MAJOR SKIN DISORDERS AGE >69 AND/OR C.C.	.8533	7.2	24
273	9 MED		MAJOR SKIN DISORDERS AGE <70 W/O C.C.	.8029	6.6	24
274	9 MED		MALIGNANT BREAST DISORDERS AGE >69 AND/OR C.C.	1.0429	7.0	24
275	9 MED		MALIGNANT BREAST DISORDERS AGE <70 W/O C.C.	.9784	5.8	23
276	9 MED		NON-MALIGANT BREAST DISORDERS	.5579	3.4	18
277	9 MED		CELLULITIS AGE >69 AND/OR C.C.	.8910	7.3	24
278	9 MED		CELLULITIS AGE 18-69 W/O C.C.	.7630	6.2	23
279	9 MED		CELLULITIS AGE 0-17	1.5997	5.1	22
280	9 MED		TRAUMA TO THE SKIN, SUBCUT TISS + BREAST AGE >69 +/OR C.C.	.5452	4.6	22

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TABLE 5

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DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
281	9 MED		TRAUMA TO THE SKIN, SUBCUT TISS + BREAST AGE 18-69 W/O C.C.	.9517	3.4	16
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.	.6379	5.0	22
284	9 MED		MINOR SKIN DISORDERS AGE <70 W/O C.C.	.5235	3.3	19
285	10 SURG		AMPUTATION OF LOWER LIMB FOR ENDOCRINE,NUTRITIONAL&METABOLIC DIS.	2.6469	18.0	38
286	10 SURG		ADRENAL + PITUITARY PROCEDURES	2.6339	13.2	36
287	10 SURG		SKIN GRAFTS + WOUND DEBRIDE FOR ENDOC,NUTRIT + METAB DISORDERS	2.2793	15.2	32
288	10 SURG		O.R. PROCEDURES FOR OBESITY	2.1274	9.8	27
289	10 SURG		PARATHYROID PROCEDURES	1.3191	6.3	24
290	10 SURG		THYROID PROCEDURES	.8610	5.0	14
291	10 SURG		THYROGLOSSAL PROCEDURES	.6184	3.4	11
292	10 SURG		OTHER ENDOCRINE, NUTRIT + METAB O.R. PROC AGE > 69 +/OR C.C.	2.4216	11.8	29
293	10 SURG		OTHER ENDOCRINE, NUTRIT + METAB O.R. PROC AGE <70 W/O C.C.	2.0057	9.3	26
294	10 MED		DIABETES AGE =>36	.7633	5.6	24
295	10 MED		DIABETES AGE 0-35	.6251	5.1	22
296	10 MED		NUTRITIONAL + MISC. METABOLIC DISORDERS AGE >69 AND/OR C.C.	.8240	6.0	23
297	10 MED		NUTRITIONAL + MISC. METABOLIC DISORDERS AGE 18-69 W/O C.C.	.7010	4.9	22
298	10 MED		NUTRITIONAL + MISC. METABOLIC DISORDERS AGE 0-17	.8414	3.8	21
299	10 MED		INBORN ERRORS OF METABOLISM	.8007	5.2	22
300	10 MED		ENDOCRINE DISORDERS AGE >69 AND/OR C.C.	.9307	6.8	24
301	10 MED		ENDOCRINE DISORDERS AGE <70 W/O C.C.	.6904	5.1	22
302	11 SURG		KIDNEY TRANSPLANT	4.6235	21.3	38
303	11 SURG		KIDNEY,URETER + MAJOR BLADDER PROCEDURE FOR NEOPLASM	2.7630	14.1	31
304	11 SURG		KIDNEY,URETER + MAJ BLDR PROC FOR NON-MALIG AGE >69 +/OR C.C.	2.0261	10.7	28
305	11 SURG		KIDNEY,URETER + MAJ BLDR PROC FOR NON-MALIG AGE <70 W/O C.C.	1.5044	8.4	25
306	11 SURG		PROSTATECTOMY AGE >69 AND/OR C.C.	1.2844	8.1	25
307	11 SURG		PROSTATECTOMY AGE <70 W/O C.C.	.9669	6.4	19
308	11 SURG		MINOR BLADDER PROCEDURES AGE >69 AND/OR C.C.	1.1376	6.0	23
309	11 SURG		MINOR BLADDER PROCEDURES AGE <70 W/O C.C.	.8665	4.6	22
310	11 SURG		TRANSURETHRAL PROCEDURES AGE >69 AND/OR C.C.	.7289	4.2	17
311	11 SURG		TRANSURETHRAL PROCEDURES AGE <70 W/O C.C.	.5608	3.3	11
312	11 SURG		URETHRAL PROCEDURES, AGE >69 AND/OR C.C.	.7350	4.4	18
313	11 SURG		URETHRAL PROCEDURES, AGE 18-69 W/O C.C.	.5975	3.6	14
314	11 SURG	*	URETHRAL PROCEDURES, AGE 0-17	.4323	2.3	11
315	11 SURG		OTHER KIDNEY + URINARY TRACT O.R. PROCEDURES	2.7653	9.7	27

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DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
316	11	MED	RENAL FAILURE	1.3238	6.4	23
317	11	MED	ADMIT FOR RENAL DIALYSIS	.6573	2.6	12
318	11	MED	KIDNEY + URINARY TRACT NEOPLASMS AGE >69 AND/OR C.C.	.9236	5.5	23
319	11	MED	KIDNEY + URINARY TRACT NEOPLASMS AGE <70 W/O C.C.	.7652	3.8	21
320	11	MED	KIDNEY + URINARY TRACT INFECTIONS AGE >69 AND/OR C.C.	.8596	6.5	23
321	11	MED	KIDNEY + URINARY TRACT INFECTIONS AGE 18-69 W/O C.C.	.6773	5.1	19
322	11	MED	KIDNEY + URINARY TRACT INFECTIONS AGE 0-17	.6764	4.9	19
323	11	MED	URINARY STONES AGE >69 AND/OR C.C.	.5919	3.7	17
324	11	MED	URINARY STONES AGE <70 W/O C.C.	.4127	2.7	11
325	11	MED	KIDNEY + URINARY TRACT SIGNS + SYMPTOMS AGE >69 AND/OR C.C.	.6535	4.5	22
326	11	MED	KIDNEY + URINARY TRACT SIGNS + SYMPTOMS AGE 18-69 W/O C.C.	.5238	3.5	16
327	11	MED	KIDNEY + URINARY TRACT SIGNS + SYMPTOMS AGE 0-17	.5268	3.0	20
328	11	MED	URETHRAL STRICTURE AGE >69 AND/OR C.C.	.5972	3.9	17
329	11	MED	URETHRAL STRICTURE AGE 18-69 W/O C.C.	.4919	3.0	12
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.	.8177	5.3	22
332	11	MED	OTHER KIDNEY + URINARY TRACT DIAGNOSES AGE 18-69 W/O C.C.	.6542	3.9	20
333	11	MED	OTHER KIDNEY + URINARY TRACT DIAGNOSES AGE 0-17	.8007	3.6	21
334	12	SURG	MAJOR MALE PELVIC PROCEDURES WITH C.C.	1.8139	12.2	28
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O C.C.	1.4938	11.0	23
336	12	SURG	TRANSURETHRAL PROSTATECTOMY AGE >69 AND/OR C.C.	.9937	6.9	17
337	12	SURG	TRANSURETHRAL PROSTATECTOMY AGE <70 W/O C.C.	.7883	5.7	12
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	.8995	4.9	22
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANT AGE >17	.5861	3.4	12
340	12	SURG *	TESTES PROCEDURES, NON-MALIGNANT AGE 0-17	.4335	2.4	7
341	12	SURG	PENIS PROCEDURES	1.0574	4.3	14
342	12	SURG	CIRCUMCISION AGE >17	.4315	2.4	8
343	12	SURG *	CIRCUMCISION AGE 0-17	.3788	1.7	4
344	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.1200	6.3	23
345	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIG	.8158	4.8	21
346	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, AGE >69 AND/OR C.C.	.8591	5.6	23
347	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, AGE <70 W/O C.C.	.6561	3.7	21
348	12	MED	BENIGN PROSTATIC HYPERTROPHY AGE >69 AND/OR C.C.	.6333	3.9	19
349	12	MED	BENIGN PROSTATIC HYPERTROPHY AGE <70 W/O C.C.	.4953	2.9	12
350	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.6291	4.8	17

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DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
351	12	MED	STERILIZATION, MALE	.3799	1.8	6
352	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.5354	3.3	16
353	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY + VULVECTOMY	1.8859	10.6	28
354	13	SURG	NON-RADICAL HYSTERECTOMY AGE >69 AND/OR C.C.	1.2409	9.8	19
355	13	SURG	NON-RADICAL HYSTERECTOMY AGE <70 W/O C.C.	.9354	7.4	13
356	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	.8589	7.0	15
357	13	SURG	UTERUS + ADENEXA PROCEDURES, FOR MALIGNANCY	2.0984	12.2	29
358	13	SURG	UTERUS + ADENEXA PROC FOR NON-MALIGNANCY EXCEPT TUBAL INTERRUPT	1.1200	6.9	24
359	13	SURG	INCISIONAL TUBAL INTERRUPTION FOR NON-MALIGNANCY	.5122	2.8	9
360	13	SURG	VAGINA, CERVIX + VULVA PROCEDURES	.6007	3.4	15
361	13	SURG	LAPAROSCOPY + ENDOSCOPY (FEMALE) EXCEPT TUBAL INTERRUPTION	.7150	3.2	17
362	13	SURG	LAPAROSCOPIC TUBAL INTERRUPTION	.3625	1.8	4
363	13	SURG	D+C,CONIZATION + RADIO-IMPLANT, FOR MALIGNANCY	.6196	3.6	15
364	13	SURG	D+C,CONIZATION EXCEPT FOR MALIGNANCY	.3960	2.2	7
365	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.9273	10.9	28
366	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM AGE >69 AND/OR C.C.	.8644	4.9	22
367	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM AGE <70 W/O C.C.	.5436	2.8	16
368	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	.7569	5.9	23
369	13	MED	MENSTRUAL + OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	.5571	3.9	20
370	14	SURG	CESAREAN SECTION WITH C.C.	1.1047	7.1	17
371	14	SURG	CESAREAN SECTION W/O C.C.	.7569	5.5	11
372	14	MED	VAGINAL DELIVERY WITH COMPLICATING DIAGNOSES	.6060	4.1	15
373	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.3575	2.5	7
374	14	SURG	VAGINAL DELIVERY WITH STERILIZATION AND/OR D+C	.8671	5.3	7
375	14	SURG *	VAGINAL DELIVERY WITH O.R. PROC EXCEPT STERIL AND/OR D+C	.6817	4.4	15
376	14	MED	POSTPARTUM AND POSTABORTION DIAGNOSES W/O O.R. PROCEDURE	.4620	3.3	16
377	14	SURG	POSTPARTUM AND POSTABORTION DIAGNOSES WITH O.R. PROCEDURE	.6999	3.0	14
378	14	MED	ECTOPIC PREGNANCY	.7667	4.5	13
379	14	MED	THREATENED ABORTION	.2202	1.9	7
380	14	MED	ABORTION W/O D+C	.3322	1.8	8
381	14	MED	ABORTION WITH D+C OR ASPIRATION CURETTAGE	.3749	1.7	5
382	14	MED	FALSE LABOR	.1132	1.2	3
383	14	MED	OTHER ANTEPARTUM DIAGNOSES WITH MEDICAL COMPLICATIONS	.4512	3.4	16
384	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	.4588	2.6	16
385	15		NEONATES, DIED OR TRANSFERRED	3.0262	9.0	26

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*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

TABLE 5

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
386	15		EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	1.4695	8.7	26
387	15	*	PREMATURITY WITH MAJOR PROBLEMS	1.6267	13.3	30
388	15	*	PREMATURITY W/O MAJOR PROBLEMS	1.1571	8.6	26
389	15		FULL TERM NEONATE WITH MAJOR PROBLEMS	1.7703	9.2	26
390	15		NEONATES WITH OTHER SIGNIFICANT PROBLEMS	1.3101	6.3	23
391	15		NORMAL NEWBORN	1.6163	7.8	25
392	16	SURG	SPLENECTOMY AGE >17	3.0969	13.3	30
393	16	SURG *	SPLENECTOMY AGE 0-17	1.5206	9.1	26
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD + BLOOD FORMING ORGANS	1.0978	5.0	22
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.7240	4.7	22
396	16	MED	RED BLOOD CELL DISORDERS AGE 0-17	.2875	1.3	3
397	16	MED	COAGULATION DISORDERS	.9956	6.0	23
398	16	MED	RETICULOENDOTHELIAL + IMMUNITY DISORDERS AGE >69 AND/OR C.C.	.9782	5.5	23
399	16	MED	RETICULOENDOTHELIAL + IMMUNITY DISORDERS AGE <70 W/O C.C.	.7425	4.3	21
400	17	SURG	LYMPHOMA OR LEUKEMIA WITH MAJOR O.R. PROCEDURE	2.6350	12.6	30
401	17	SURG	LYMPHOMA OR LEUKEMIA WITH OTHER O.R. PROC AGE >69 AND/OR C.C.	1.5680	9.1	25
402	17	SURG	LYMPHOMA OR LEUKEMIA WITH OTHER O.R. PROCEDURE AGE <70 W/O C.C.	1.0696	5.6	23
403	17	MED	LYMPHOMA OR LEUKEMIA AGE >69 AND/OR C.C.	1.3325	6.7	24
404	17	MED	LYMPHOMA OR LEUKEMIA AGE 18-69 W/O C.C.	1.0484	5.0	22
405	17	MED *	LYMPHOMA OR LEUKEMIA AGE 0-17	1.0408	4.9	22
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPLASM W MAJ O.R.PROC + C.C.	2.5280	12.8	30
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O C.C.	1.7146	8.6	26
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL WITH MINOR O.R.PROC	1.0572	5.3	22
409	17	MED	RADIOTHERAPY	.9650	6.8	24
410	17	MED	CHEMOTHERAPY	.4351	2.4	9
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.6107	3.9	21
412	17	MED	HISTORY OF MALIGNANCY WITH ENDOSCOPY	.3412	1.9	6
413	17	MED	OTHR MYELOPROLIF DISORD OR POORLY DIFF NEOPL DX AGE>69 +/OR C.C	1.0497	6.9	24
414	17	MED	OTHR MYELOPROLIF DISORD OR POORLY DIFF NEOPL DX AGE<70 W/O C.C.	.9109	5.4	22
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS + PARASITIC DISEASES	3.2501	14.4	31
416	18	MED	SEPTICEMIA AGE >17	1.6163	8.4	25
417	18	MED	SEPTICEMIA AGE 0-17	1.2536	5.9	23
418	18	MED	POSTOPERATIVE + POST-TRAUMATIC INFECTIONS	1.0054	7.5	25
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >69 AND/OR C.C.	.9341	6.1	23
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE 18-69 W/O C.C.	.5491	5.6	23

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

TABLE 5

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
421	18	MED	VIRAL ILLNESS AGE >17	.5687	4.6	16
422	18	MED	VIRAL ILLNESS + FEVER OF UNKNOWN ORIGIN AGE 0-17	.6645	3.6	16
423	18	MED	OTHER INFECTIOUS + PARASITIC DISEASES DIAGNOSES	1.2972	7.9	25
424	19	SURG	O.R. PROCEDURES WITH PRINCIPAL DIAGNOSIS OF MENTAL ILLNESS	2.2040	14.6	32
425	19	MED	ACUTE ADJUST REACT + DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	.6115	4.6	22
426	19	MED	DEPRESSIVE NEUROSES	.8417	7.2	25
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.7170	6.5	24
428	19	MED	DISORDERS OF PERSONALITY + IMPULSE CONTROL	.9618	7.6	25
429	19	MED	ORGANIC DISTURBANCES + MENTAL RETARDATION	.8435	7.6	25
430	19	MED	PSYCHOSES	1.0372	10.6	28
431	19	MED	CHILDHOOD MENTAL DISORDERS	.8385	6.8	24
432	19	MED	OTHER DIAGNOSES OF MENTAL DISORDERS	.6970	4.8	22
433	20		SUBSTANCE USE AND INDUCED ORGANIC MENTAL DISORDERS, LEFT AMA	.3652	2.9	16
434	20		SUBSTANCE ABUSE,INTOX. OR INDUCED MENTAL SYNDROME EXC DEPENDENCE	.7150	5.4	22
435	20		SUBSTANCE DEPENDENCE, DETOX. AND/OR OTHER SYMPTOMATIC TREATMENT	.8076	6.8	24
436	20		SUBSTANCE DEPENDENCE WITH REHABILITATION THERAPY	1.0181	10.1	27
437	20		SUBSTANCE DEPENDENCE, COMBINED REHABILITATION AND DETOX. THERAPY	1.3339	14.6	32
438			NO LONGER VALID	.0000		
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.7246	8.7	26
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	1.4956	9.0	26
441	21	SURG	HAND PROCEDURES FOR INJURIES	.7408	2.7	16
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES AGE >69 AND/OR C.C.	1.7966	6.0	23
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES AGE <70 W/O C.C.	1.4927	5.5	23
444	21	MED	MULTIPLE TRAUMA AGE >69 AND/OR C.C.	.7118	5.3	22
445	21	MED	MULTIPLE TRAUMA AGE 18-69 W/O C.C.	.5983	4.0	21
446	21	MED	* MULTIPLE TRAUMA AGE 0-17	.4796	2.4	10
447	21	MED	ALLERGIC REACTIONS AGE >17	.4444	2.9	13
448	21	MED	* ALLERGIC REACTIONS AGE 0-17	.3469	2.9	9
449	21	MED	POISONING AND TOXIC EFFECTS OF DRUGS AGE >69 AND/OR C.C.	.6968	4.7	22
450	21	MED	POISONING AND TOXIC EFFECTS OF DRUGS AGE 18-69 W/O C.C.	.5452	3.3	18
451	21	MED	* POISONING AND TOXIC EFFECTS OF DRUGS AGE 0-17	.2862	2.1	8
452	21	MED	COMPLICATIONS OF TREATMENT AGE >69 AND/OR C.C.	.8044	4.6	22
453	21	MED	COMPLICATIONS OF TREATMENT AGE <70 W/O C.C.	.7472	4.2	21
454	21	MED	OTHER INJURIES, POISONINGS + TOXIC EFF DIAG AGE >69 AND/OR C.C.	.8121	4.6	22
455	21	MED	OTHER INJURIES, POISONINGS + TOXIC EFF DIAG AGE <70 W/O C.C.	.5922	3.5	21

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TABLE 5

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
456	22		BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.6998	5.5	23
457	22		EXTENSIVE BURNS	7.0781	8.5	26
458	22	SURG	NON-EXTENSIVE BURNS WITH SKIN GRAFTS	3.6938	18.7	36
459	22	SURG	NON-EXTENSIVE BURNS WITH WOUND DEBRIDEMENT + OTHER O.R. PROC	3.1498	13.7	31
460	22	MED	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	1.1651	7.5	25
461	23	SURG	O.R. PROC WITH DIAGNOSES OF OTHER CONTACT WITH HEALTH SERVICES	1.3863	5.1	22
462	23	MED	REHABILITATION	2.1050	17.5	35
463	23	MED	SIGNS + SYMPTOMS WITH C.C.	.7971	5.9	23
464	23	MED	SIGNS + SYMPTOMS W/O C.C.	.7052	5.0	22
465	23	MED	AFTERCARE WITH HISTORY OF MALIGNANCY AS SECONDARY DX	.2889	1.7	5
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DX	.4135	2.7	15
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.6242	3.4	20
468			UNRELATED OR PROCEDURE	2.4340	11.5	29
469			***PDX INVALID AS DISCHARGE DIAGNOSIS	.0000	.0	0
470			***UNGROUPABLE	.0000	.0	0
471	8	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCEDURES OF THE LOWER EXTREMI	3.9028	20.9	38

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*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
A. DRG LOGIC ISSUES	
1. In MDC 5 (Diseases and Disorders of the Circulatory System), GROUPER assigns a patient who has had a toe or upper limb amputation to DRG 114 (Upper Limb and Toe Amputation for Circ. Sys. Disorders) - weight 2.0848. If this same patient also has a leg amputated during the same hospital episode, the patient is still assigned to DRG 114, rather than to DRG 113(Amputations for Circ. Sys. Disorders Except Upper Limb and Toe) weight 2.6522.	Assign a patient to DRG 114 if only a toe or upper limb has been amputated. If the patient also had a leg amputation or any amputation for circulatory disorders other than a toe or upper limb, the assignment is DRG 113.
2. In MDC 9 (Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast), GROUPER assigns a patient who does not have a principal diagnosis of malignancy and who has had an open breast biopsy to DRG 262 (Breast Biopsy and Local Excision for Non-malignancy) - weight .4569. If the patient also has, for example, a unilateral simple mastectomy during the same hospital episode, the patient is still assigned to DRG 262 rather than DRG 261 (Breast Proc. for Non-malignancy Except Biopsy and Loc. Excision) - weight .7253.	Change the initial search from "Principal Diagnosis of Malignancy" to "Any Diagnosis of Malignancy" and assign those patients who do not have any diagnosis of a breast malignancy and who have a biopsy and local excision only to DRG 262. If the patient also has a breast procedure for nonmalignancy other than a biopsy or local excision, the assignment is DRG 261.
3. Most of the congenital anomaly diagnosis codes are included in the MDC associated with the organ system affected. There are, however, four congenital anomaly codes in MDC 15 (Newborns and Neonates with Conditions Originating in the Perinatal Period) that would be more appropriately included in another MDC as they are not solely used as newborn or neonate diagnoses.	Move diagnosis code 7583 (Autosmal Deletion Snyd.) to MDC 19 (Mental Diseases and Disorders); DRG 429 (Organic Disturbances and Mental Retardation). Move diagnosis code 7584 (Balance Autosom. Transloc.) and diagnosis code 7585 (Autosomal Anomolies NEC) to MDC 23 (Factors Influencing Health Status and Other Contacts With Health Services); DRG 467 (Other Factors Influencing Health Status). Move diagnosis code 7586 (Gonadal Dsygenesis) to MDC 12 (Diseases and Disorders of the Male Reproductive System); DRG 352 (Other Male Reproductive System Diagnoses); and MDC 13 (Diseases and Disorders of the Female Reproduction System); DRG 369 (Other Female Reproductive System Procedures). The MDC assignment is dependent on the sex of the patient.
4. MDC 17 (Myeloproliferative Diseases and Disorders, Poorly Differentiated Neoplasms) differs from all other MDCs with a surgical hierarchy because patients cannot be assigned to DRG 468 (Unrelated O.R. Procedure). That is, patients who had selected O.R. procedures are assigned to certain DRGs and patients who had an O.R. procedure not in the selected list are assigned to the medical DRGs (403-405, 409-414) and not to DRG 468.	Assign patients who have any surgical procedure, other than those listed as major procedures (DRGs 400, 406, and 407), in MDC 17 to DRGs 401, 402, and 408, rather than to the medical DRGs.

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
5. DRG 243 (Medical Back Problems) includes diagnosis codes for all type of back pain except code 7241 (Pain in Thoracic Spine), which is assigned to DRG 247 (Signs and Symptoms of Musculoskeletal System and Connective Tissues).	Add diagnosis code 7241 to DRG 243 and remove it from DRG 247.
6. DRG 108 and DRG 109 include cardiothoracic procedures. The distinction is that procedures in DRG 108 (Cardiothoracic Proc., Except Valve and Coronary Bypass, with Pump) are performed with a heart pump and procedures in DRG 109 (Cardiothoracic Procedures Without Pump) are performed without a heart pump. Currently, however, not all procedures in DRG 108 always require the use of a heart pump and procedures in DRG 109 are not always performed without a heart pump.	Combine the O.R. procedures in DRG 108 and DRG 109. The presence of procedure code 3961 (Extracoporeal Circulation) determines whether or not a heart pump was used. If code 3961 is present on the record, assign the patient to DRG 108; if code 3961 is not present, assign to DRG 109.
7. Procedure code 36.0 (Remove Coronary Artery Obstruction) is now used almost exclusively to code percutaneous transluminal coronary angioplasty. Code 36.0 is currently assigned to DRG 108 (Cardiothoracic Proc., Except Valve and Coronary Bypass, With Pump) - weight 4.3301, which is considered to be major cardiac surgery with heart pump. However, percutaneous transluminal coronary angioplasty is not done with heart pump.	Move procedure code 36.0 to DRG 112 (Vascular Procedures Except Major Reconstruction) - weight 2.3256 and remove it from DRG 108.
8a. Presently, diagnosis code 7746 (Fetal/Neonatal Jaundice, NOS) is on the list of complications and comorbidities (CC). It is also listed in MDC 15 (Newborns and Other Neonates With Conditions Originating in the Perinatal Period); DRG 391 (Normal Newborns) as an incidental problem.	Remove code 7746 from the list of CCs and continue to treat it as an incidental problem for DRG 391.
b. In the past, there have been problems with the assignment of patients to DRG 391 (Normal Newborns) in MDC 15.	A patient is assigned to DRG 391 if the principal diagnosis and the only secondary diagnoses are from the following list:

V300	Single liveborn-in hosp	V773	Screen-phenylketonuria
V301	Singl livebrn-before adm	605	Redun prepuce phimosis
V310	Twin, mate lb-in hosp	6869	Local skin infection NOS
V311	Twin, mate lb-before adm	6910	Diaper or napkin rash
V320	Twin, mate sb-in hosp	7624	Prolapsed cord aff nb
V321	Twin, mate sb-before adm	7625	Oth umbil cord compress
V330	Twin NOS-in hospital	7626	Umbil cord NEC aff nb
V331	Twin NOS-before admissn	7630	Breech del/extrac aff nb
V340	Oth multiple nb-in hosp	7631	Malpos/dispro NEC aff nb
V341	Oth mult nb-before adm	7632	Forceps delivery aff nb
V350	Oth multiple sb-in hosp	7633	Vacuum extrac del aff nb
V351	Oth mult sb-before adm	7636	Precipitate del aff nb
V360	Multiple nb/sb-in hosp	7639	Compl deliv NOS aff nb
V361	Mult nb/sb-before adm	7660	Exceptionally large baby

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
	V370 Mult birth NOS-in hosp V371 Mult brth NOS-before adm V390 Liveborn NOS-in hosp V391 Liveborn NOS-before adm V502 Routine circumcision V703 Med exam NEC-admin purposes 7661 Heavy-for-date infan NEC 7662 Post-term infant NOS 7671 Scalp injury at birth 7686 Mild/mod birth asphyxia 7746 Fetal/neonatal jaund NOS 7788 Nb integument cond NEC Therefore, the branching criteria on the tree diagram in MDC 15 changes from "Normal Newborns Without Significant Secondary Diagnosis" to "Normal Newborns With Any Significant Diagnosis."
9. Diagnosis codes 1946 (Malig. Neopl. Paraganglia NEC), 2276 (Benign neopl. paraganglia), and 2373 (Unc. Behav. Neo. Paragang.) are in MDC 10 (Endocrine, Nutritional and Metabolic Diseases and Disorders) while other related diagnoses are in MDC 1 (Diseases and Disorders of the Nervous System).	Add diagnosis codes 1946, 2276, and 2373 to MDC 1 (DRGs 10 and 11) and remove from MDC 10.
10. Diagnosis code 9968 (Complication Transplanted Organ) is assigned to MDC 21 (Injury, Poisoning and Toxic Effects of Drugs). Since this code relates to any transplanted organ, it cannot be assigned to an organ specific MDC. Currently, codes 5051 (Ancillary Liver Transplant) and 5059 (Liver Transplant) are allowed with MDC 21 and assigned to DRG 442 and DRG 443 (Other O.R. Procedures for Injuries). Payment for these DRGs is inadequate for the procedure. All other transplant procedures associated with rejected organs are assigned to MDC 21, DRG 468.	Remove procedure codes 5051 and 5059 from MDC 21 (DRG 442 and DRG 443) and allow assignment to DRG 468.
11. Procedure code 5494 (Create Peritoneal Vascular Shunt) is a major shunt procedure, yet it is DRG 201 (Other Hepatobiliary or Pancreas O.R. Procedures) and not in DRG 191 (Major Pancreas, Liver and Shunt Procedures).	Add procedure code 5494 to DRG 191 and remove it from DRG 201.
12. Diagnosis code 4565 (Pelvic Varices) is assigned only to MDC 13 (Diseases and Disorders of the Female Reproductive System. This diagnosis code is also applicable to MDC 12 (Diseases and Disorders of the Male Reproductive System).	Add diagnosis code 4565 (Pelvic Varices) to MDC 12, DRG 352 (Other Male Reproductive System Diagnoses). Code is left as is on MDC 13.
13. Procedure code 031 (Division Intraspinal Nerve Root) is applicable to neck and back procedures and therefore should also be assigned to MDC 8 (Disease and Disorder of the Musculosketetal Sep. and Connective Ties.)	Add procedure code 031 (Division Intraspinal Nerve Root) to MDC 8, DRGS 214 and 215 (Back and Neck Procedures).

TABLE 6 – CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
14. DRG 209 (Major Joint Procedures) does not adequately distinguish multiple joint procedures from single joint procedures.	Create DRG 471 (Bilateral or Multiple Major Joint Procedures of the Lower Extremity) to include any combination of two of the following procedure codes: 8141, 8148, 8151, 8159, 8161, 8162, 8163, and 8164.
15. DRGs 434 through 438 do not adequately reflect substance dependence detoxification and rehabilitation treatment.	Revise DRGs 434 through 438 as follows: Move all diagnosis codes in DRGs 435, 437, and 438 (except diagnosis codes 2910, 2913, 2918, 2919, 2920, 30300, 30301, 30302, 30303, and 30390) to DRG 434 (Substance Abuse, Intoxication, or Induced Mental Syndrome Except Dependence). Move all diagnosis codes in DRGs 434 and 436 and diagnosis codes 2910, 2913, 2918, 2919, 2920, 30300, 30301, 30302, 30303, and 30390 to DRGs 435, 436, and 437. Diagnosis procedure code V57.89 must be present for a case to be assigned to DRG 436. Diagnosis procedure codes V57.89 and 94.25 must be present for a case to ba assigned to DRG 437. Delete DRG 438.
16. Patients with a principal diagnosis of diabetes mellitus who receive kidney transplants are assigned to DRG 468 (Unrelated O.R. Procedure) rather than DRG 302 (Kidney Transplant).	Move procedure code 5569 (Kidney transplant) to DRG 302 even if code 25040 or 25041 (Diabetes) is present.
B. OPERATING ROOM vs NON-OPERATING ROOM ASSIGNMENT 1. Procedure code 3786 (Remove Cardiac Pacemaker) is used for the removal of both a temporary pacemaker and a permanent pacemaker. Presently, this code appears on the list of operating room procedures and, when coded, results in assignment to one of the operative pacemaker DRGs. In general, the removal of a temporary pacemaker is not performed in the operating room. If a permanent pacemaker is removed, then usually a replacement pacemaker is inserted. In that case, the reinsertion is coded and the patient is assigned to the appropriate DRG. The current operating room procedures, listed below, are also considered to be procedures not generally performed in the operating room. 8623 (Removal of nail) 5499 (Abdomen region operation, NEC) 3996 (Total body perfusion) 5196 Percutaneous Extraction of common duct stones)	Remove codes 3786, 8623, 5499, 3996, and 5196 from the list of operating room procedures and from the DRGs to which they are currently assigned.
2. Procedure codes 6813 (Uterine Biopsy) and 7076 (Hymenorrhaphy) are generally performed in an operating room and therefore should be assigned to the list of O.R. procedures.	Add procedure codes 6813 (Uterine biopsy) and 7076 (Hymenorrhaphy) to the list of O.R. procedures and to MDC 13, DRG 360 (Vagina, cervix and vulva procedures).

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
C. COMPLICATION AND COMORBIDITY MEMBERSHIP A number of diagnostic and procedural codes (mostly amputation codes) should be added to the list of complications and comorbidities.	Add the following diagnosis codes to the list of complications and comorbidities: 25090 Diab w compl NOS adult 25091 Diab w compl NOS juven 87272 Open wnd ossicles-comp 87273 Open wnd eustach tb-comp 87274 Open wound cochlea-comp 87333 Open wnd nas sinus-compl 8743 Open wound thyroid-compl 8745 Open wound pharynx-compl 8870 Amput below elb, unilat 8871 Amp below elb, unil-comp 8872 Amput abv elbow, unilat 8873 Amput abv elb, unil-comp 8874 Amputat arm, unilat NOS 8875 Amput arm, unil NOS-comp 8876 Amputation arm, bilat 8877 Amputat arm, bilat-compl 8960 Amputation foot, unilat 8961 Amput foot, unilat-compl 8962 Amput foot, bilat 8963 Amputat foot, bilat-comp 8970 Amput below knee, unilat 8971 Amputat bk, unilat-compl 8972 Amput above knee, unilat 8973 Amput abv kn, unil-compl 8974 Amputat leg, unilat NOS 8975 Amput leg, unil NOS-comp 8976 Amputation leg, bilat 8977 Amputat leg, bilat-compl
D. SURGICAL HIERARCHY AND WEIGHT ISSUES 1. When a cataract operation is performed, the patient is assigned to DRG 39 (Lens Procedure) - weight .4958. If a vitrectomy or anterior chamber injection or evacuation is performed during the cataract operation, and coded accordingly, the patient is assigned to DRG 42 (Intraocular Procedures Except Retina, Iris and Lens) - weight .5845. This is because vitrectomies and anterior chamber procedures are higher than lens procedures in the surgical hierarchy. However, the process of removing a small amount of vitreous or an injection or evacuation from the anterior chamber during a cataract operation is incidental to the lens extraction and the DRG assignment, therefore, should be for the lens extraction, not for the higher weighted vitrectomy or anterior chamber.	If a lens procedure only or a lens procedure and one of the following procedures is performed, assign DRG 39. 1291 Therapeut Evac Ant Chamber) 1292 Anterior Chamber Inject. 1471 Anterior Removal Vitreous 1472 Vitreous Removal NEC 1473 Anterior Mechan Vitrect. 1474 Mechan Vitrectomy 1475 Vitreous Substitut Inject. 1479 Vitreous Operation NEC If any of the procedures listed above are performed without a lens procedure, assign DRG 42.

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
2. There has been concern regarding the DRG surgical hierarchy in MDC 6 (Diseases and Disorders of the Digestive System). The position of Peritoneal Adhesiolysis, DRG 150-151, in relation to Minor Small and Large Bowel Procedures, DRG 152-153, and Hernia Procedures, DRG 159-163 is of particular concern. Analysis of HCFA average LOS and average charge data for the surgical DRGs in MDC 6 supports modification of the surgical hierarchy for MDC 6.	Change MDC 6 surgical hierarchy as follows: MDC 6-Diseases and Disorders of the Digestive System DRG 146-147 Rectal Resection DRG 148-149 Major Small and Large Bowel Procedures DRG 154-156 Stomach, Esophageal and Duodenal Procedures DRG 150-151 Peritoneal Adhesiolysis DRG 152-153 Minor Small and Large Bowel Procedures DRG 164-167 Appendectomy DRG 159-163 Hernia Procedures DRG 157-158 Anal Procedures DRG 168-169 Procedures in the Mouth DRG 170-171 Other Digestive System O.R. Procedures
E. DRG 468 Patients are assigned to DRG 468 (Unrelated O.R. Procedure) when all the operating room procedures are unrelated to the MDC of the patients' principal diagnosis. There appears to be a need to update certain DRGs by including O.R. procedures that could possibly be performed for diagnoses within the MDC, so patients would no longer be assigned to DRG 468.	Add the following list of O.R. procedures, listed by MDC, to the DRG specified: MDC 01 - Diseases and Disorders of the Nervous System DRG 4 (Spinal procedures) 7781 Oth chest cage ostectomy 7791 Tot chest cage ostectomy DRG 5 (Extracranial vascular procedures) 3832 Head/neck ves resec-anas 3929 Vasc shunt and bypass NEC 3930 Suture of vessel NOS 3931 Suture of artery 3932 Suture of vein 3956 Repair vess w tis patch 3957 Rep vess w synth patch 3958 Repair vess w patch NOS 3959 Repair of vessel NEC 398 Vascular body operations 3992 Vein inject-scleros agnt DRGs 7 and 8 (Peripheral and cranial nerve and other nervous sys. procs.)

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
	0719 Endocrine dx proc NEC
	0780 Thymectomy NOS
	0781 Part excision of thymus
	0782 Total excision of thymus
	0851 Canthotomy
	0852 Blepharorrhaphy
	0859 Adjust lid position NEC
	8131 Foot arthroplas w prosth
	8139 Foot/toe arthroplast NEC
	8171 Hand arthroplas w prosth
	8179 Hand arthroplasty NEC
	8186 Carpal arthropl-syn pros
	8187 Wrist arthroplasty NEC
	8313 Other tenotomy
	8314 Fasciotomy
	8319 Soft tissue division NEC
	8321 Soft tissue biopsy
	8341 Tendon excision for grft
	8343 Musc/fasc excis for grft
	8345 Other myectomy
	8349 Other soft tissue excis
	8681 Repair facial weakness
	MDC 02 - Diseases and Disorders of the Eye
	DRG 37 (Orbital procedures)
	7679 Open reduct face fx NEC
	7691 Bone graft to face bone
	7692 Syn implant to face bone
	7646 Facial bone reconstr NEC
	DRG 38 (Primary iris procedures)
	1273 Cyclophotocoagulation
	DRG 39 (Lens Procedures)
	1301 Removal of foreign body from lens with magnet
	DRGs 40 and DRG 41 (Extraocular procedures except orbit)
	864 Radical excis skin les
	MDC 03 - Diseases and Disorders of the Ear, Nose and Throat
	DRG 55 (Miscellaneous ear, nose and throat procs.)
	0609 Incis thyroid field NEC
	0912 Lacrimal sac biopsy
	0919 Lacrimal sys dx proc NEC
	0981 Dacryocystorhinostomy
	0999 Lacrimal system op NEC
	DRG 63 (Other ear, nose and throat O.R. procs.)
	0474 Periph nerv anastom NEC
	0475 Postop revis per nerv op

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
	0476 Late repair per nerve inj
	1652 Orbit exent w bone remov
	1665 Zndry exent cavity graft
	1666 Revis exenter cavity NEC
	1698 Operation on orbit NEC
	7779 Excise bone for gft NEC
	MDC 04 - Diseases and Disorders of the Respiratory System
	DRGs 76 and 77 (O.R. proc. on the resp. sys. except major chest with O.R.)
	5012 Liver biopsy NEC
	8321 Soft tissue biopsy
	MDC 05 - Diseases and Disorders of the Circulatory System
	DRG 120 (Other O.R. procedures)
	251 Destruction tongue les
	863 Other local destruc skin
	5591 Renal decapsulation
	MDC 06 - Diseases and Disorders of the Digestive System
	DRGs 152 and 153 (Minor small and large bowel procs.)
	5684 Close ureter fistula NEC
	5783 Repair rectovesical fistula
	6942 Closure uterine fistula
	7075 Repair vag fistula NEC
	7172 Repair vulvar fistula
	DRGs 154, 155, and 156 (Stomach, esophageal and duodenal procs.)
	3173 Trachea fistula clos NEC
	3805 Thoracic vessel resect/anast
	3835 Thor vessel resec/anast
	3845 Thor ves resect w replac
	3865 Thoracic vessel excision
	3885 Occlude thoracic ves NEC
	5183 Pancreat sphincteroplas
	527 Rad pancreaticoduodenect
	DRGs 168 and 169 (Procedures on the mouth)
	293 Ex. or destr. of lesion or tissue of pharynx
	DRGs 170 and 171 (Other digestive procedures)
	3804 Incision of aorta
	3949 Vasc. proc revision NEC
	3991 Freeing of vessel
	MDC 08 - Diseases and Disorders of the Musculoskeletal Sys. and Connective Tiss.
	DRG 217 (Wound debridement and skin graft exc. hand)
	8665 Heterograft to skin
	8666 Hemograft to skin
	8671 Cut. prep. ped graft
	8672 Pedicle graft advancement
	DRGs 233 and 234 (Other musculoskel. sys. and connect. tiss. O.R. procs.)
	1651 Radical orbitomaxillect

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
	1659 Orbital exenteration NEC
	2172 Open reduction nasal fx
	2262 Exc max sinus lesion NEC
	3481 Excise diaphragm lesion
	4051 Rad dissec axillary node
	4052 Rad dissec periaort node
	4053 Rad dissect illac nodes
	4054 Radical groin dissection
	4059 Rad node dissection NEC
	5900 Retroperit dissect NOS
	6241 Remove both testes
	DRGs 226 and 227 (Soft tissue procedures)
	8681 Repair facial weakness
	MDC 09 - Diseases and Disorders of the Skin, Subcutaneous Tissue & Breast
	DRG 268 (Skin, subcutaneous tissue and breast plastic procs.)
	0838 Correct lid retraction
	2755 Full-thick grft to mouth
	2756 Skin graft to mouth NEC
	2769 Oth plastic repair palat
	8289 Hand plastic op NEC
	DRGs 269 and 270 (Other skin, subcutaneous tissue and breast O.R. procs.)
	0609 Incis thyroid field NEC
	0722 Unitateral adrenalectomy
	073 Bilateral adrenalectomy
	0763 Part excis pituitary NOS
	0764 Tot exc pituit-transfron
	0765 Tot exc pituit-transsphen
	0768 Total exc pituitary NEC
	0769 Total exc pituitary NOS
	0772 Pituitary gland incision
	0779 Pituitary operation NEC
	0823 Exc major les lid, part-thick
	6561 Remove both tubes and ovar
	6711 Endocervical biopsy
	6712 Cervical biopsy NEC
	6719 Cervical dx procedur NEC
	6739 Cervical les destruc NEC
	7024 Vaginal biopsy
	7111 Vulvar biopsy
	7119 Vulvar diagnos proc NEC
	713 Local vulvar excis NEC
	MDC 10 - Endocrine, Nutritional and Metabolic Diseases and Disorders
	DRGs 292 and 293 (Other endocrine, nutritional and metabolic O.R. procs.)
	3426 Other mediastinal biopsy
	3802 Head/neck ves incis NEC

TABLE 6 - PROPOSED CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
	3829 Blood vessel dx proc NEC
	3830 Vessel resect/anest NOS
	3833 Arm vessel resect/anast
	3838 Leg artery resect/anast
	3843 Arm ves resect w replace
	3848 Leg artery resec w repla
	3855 Thorac var v lig-strip
	3863 Arm vessel excision
	3868 Leg artery excision
	3883 Occlude arm vessel NEC
	3888 Occlude arm vessel NEC
	3925 Aorta-iliac-femor bypass
	3931 Suture of artery
	3941 Postop vasc op hem contr
	3949 Vasc proc revision NEC
	3956 Repair vess w tis patch
	3957 Rep vess w snyth patch
	3958 Repair vess w patch NOS
	3959 Repair of vessel NEC
	3991 Freeing of vessel
	544 Destruct peritoneal tiss
	MDC 11 - Diseases and Disorders of the Kidney and Urinary Tract
	DRG 315 (Other kidney and urinary tract O.R. procs.)
	0689 Other parathyroidectomy
	3806 Abdomen artery incision
	3807 Abdominal vein incision
	3816 Abdominal endarterectmy
	3836 Abd vessel resect/anast
	3837 Abd vein resect and anast
	3846 Abd artery resc w repla
	3847 Abd vein resect w replac
	3866 Abdominal artery excis
	3867 Abdominal vein excision
	3886 Occlude abd artery NEC
	3887 Occlude abd vein NEC
	3956 Repair vess w tis patch
	3957 Repair vess w synth patch
	3958 Repair vess w patch NOS
	3959 Repair of vessel NEC
	5493 Create cutaneoperiton fist
	8622 Wound debridement
	MDC 12 - Diseases and Disorders of the Male Reproductive System
	DRGs 334 and 335 (Major male pelvic procs.)
	4869 Rectal resection NEC
	5411 Exploratory laparotomy
	5751 Excision of urachus

TABLE 6 - PROPOSED CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
	MDC 13 - Diseases and Disorders of the Female Reproductive System
	DRG 360 (Vagina, cervix and vulva-procedures)
	4873 Closure of other rect fistula
	7023 Cul-de-sac biopsy
	7029 Vagin/cul-de-sac dx NEC
	7119 Vulvar diagnos proc NEC
	DRG 365 (Other female reproductive system O.R. procs.)
	5734 Bladder biopsy NEC
	5751 Excision of urachus
	5759 Open Ex or dest oth les ortis of blad
	5902 Oth lys of periter adhes
	5919 Oth incis of perives tiss
	7012 Culdotomy
	MDC 14 - Pregnancy, Childbirth and the Puerperium
	DRG 374 (Vaginal delivery with sterilization and/or C.C.)
	6697 Bury fimbriae in uterus
	DRG 375 (Gaginal delivery with O.R. proc. except steril. and/or D.C.)
	387 Plication of vena cava
	4024 Excise inguinal node
	403 Regional lymph node exc
	5411 Exploratory laparotomy
	5421 Laparoscopy
	680 Hysterotomy
	MDC 16 - Blood, Blood Forming Organs and Immunological Diseases and Disorders
	DRG 394 (Other O.R. procs. of the blood and blood forming organs)
	400 Incis lymphatic structur
	MDC 17 - Myeloproliferative Diseases and Poorly Differentiated Neoplasms
	DRG 400 (Lymphoma or leukemia with major O.R. proc.) and
	DRGs 406 and 407 (Myeloprolif. disord. or poorly diff. neopl. with maj. O.R. With C.C.)
	3229 Destroy loc lung les NEC
	343 Destruct mediastin les
	0371 Spin subarach-peritoneal shunt
	0372 Spin subarach-ureteral shunt
	0379 Other shunt spinal theca
	410 Bone marrow transplant
	DRGs 401 and 402 (Lymphoma or leukemia with minor O.R. proc.) and
	DRG 408 (Myeloprolif. disord. or poorly diff. neopl. with minor O.R. proc.)
	3421 Transpleura thoracoscopy
	4415 Gastric biopsy NEC
	4515 Small bowel biopsy NEC
	4526 Large bowel biopsy NEC
	5733 Transureth bladd biopsy
	8321 Soft tissue biopsy
	8339 Exc les soft tissue NEC

TABLE 6 - PROPOSED CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
	MDC 21 - Injury, Poisoning and Toxic Effects of Drugs
	DRGs 442 and 443 (Other O.R. procedures for injuries)
	0141 Thalamus operations
	0201 Linear craniectomy
	0444 Tarsal tunnel release
	0780 Thymectomy NOS
	0781 Part excision of thymus
	0782 Total excision of thymus
	0791 Thymus field exploration
	0792 Incision of thymus
	0793 Repair of thymus
	100 Remov embed FB conjunct w incis
	110 Magnet remov embed FB cornea
	111 Corneal incision
	1200 Remov. intraoc FY anter seg eye NOS
	1372 Secondary insert lens
	138 Implanted lens removal
	139 Other operations on lens
	1839 Excis external ear NEC
	214 Resection of nose
	2169 Turbinectomy NEC
	245 Alveoloplasty
	2792 Mouth incision NOS
	2799 Oral cavity ops NEC
	287 Hemorr contrl post T and A
	2891 Incis to remov tonsil FB
	290 Pharyngotomy
	294 Plastic op on pharynx
	2953 Closure pharynx fistula NEC
	2959 Pharyngeal repair NEC
	2999 Pharyngeal operation NEC
	301 Hemilaryngectomy
	3021 Epiglottidectomy
	3022 Vocal cordectomy
	3029 Other part laryngectomy
	303 Complete laryngectomy
	3173 Trachea fistula clos NEC
	3199 Other tracheal operation
	321 Other bronchial excision
	330 Incision of bronchus
	331 Incision of lung
	3392 Bronchial ligation
	3398 Bronchial operation NEC
	3399 Lung operation NEC
	341 Incision of mediastinum
	3421 Transpleura thoracoscopy
	3489 Diaphragm operation NEC

TABLE 6 - CHANGES TO GROUPER PROGRAM

PROBLEM	PROPOSED GROUPER MODIFICATION
	3499 Thoracic operation NEC 3711 Cardiotomy 3949 Vasc proc revision NEC 537 Abd repair-diaphr hernia 5380 Thor rep-diaph hern NOS 5381 Diaphragmatic plication 5382 Parastern hernia repair 5553 Rejected kidney nephrect 5554 Bilateral nephrectomy 576 Partial cystectomy 5779 Total cystectomy NEC
F. DOCUMENTATION ISSUES Some of the language in the DRG documentation is not completely descriptive of the classification of cases.	Make the following changes to the DRG documentation: * Update MDC tree diagrams to reflect the surgical hierarchy of each MDC. The tree diagrams have each surgical group ordered from left to right in hierarchical order. Since DRG numbers are not changed, the trees no longer increase in numerical order from left to right. * In the medical partitioning section of MDC 5 (Diseases and Disorders of the Circulatory System), change the labels on pp. 187-189 to better define the list of "Cardiovascular Complications" and "Complex Cardiovascular Diagnoses." * Remove procedure codes 431 (Temporary Gastrostomy) and 7022 (Culdoscopy) from the list of operating room procedures in MDC 3 and MDC 14, respectively. These codes do not appear in Appendix B (Operating Room Procedures) and are not considered by GROUPER to be operating procedures. * The title of the branching criteria in the tree diagram for DRG 115 (Permanent Cardiac Pacemaker Implant with AMI or CHF) is changed from "Principal Diagnoses of AMI or CHF" to "Principal Diagnoses of AMI, Heart Failure or Shock." * The title of the branching criteria in the tree diagram for DRGs 164 and 165 (Appendectomy With a Complicated Principal Diagnoses) is changed from "Complicated Diagnosis" to "Complicated Principal Diagnosis." * The title of the branching criteria in the tree diagram for DRG 303 (Kidney, Ureter and Major Bladder Proc. for Neoplasm) is changed from "Principal Diagnosis of Malignancy" to "Principal Diagnois of Neoplasm. These changes are editorial in nature and do not affect in any way the classification of cases.

Appendix A—Regulatory Impact Analysis

A. Introduction

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to 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, government agencies, or geographic regions, or (3) 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.

Several provisions proposed in this document would exceed the $100 million threshold under E.O. 12291. Therefore, we are including an impact analysis that contains a discussion of each significant proposed change. In our summary, we discuss the expected net effects resulting from these changes.

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant economic impact on a substantial number of small entities.

Under the RFA, we treat all hospitals as small entities. It is clear that these proposed changes would affect a substantial number of hospitals and the effects on some would be significant. Therefore, we are providing an initial regulatory flexibility analysis.

The discussion below, 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

We expect these proposed changes to further our original objectives in implementing the prospective payment system, which include:

- Restructuring hospitals economic incentives;
- Basing payment on a system that identifies the product being purchased more accurately than cost reimbursement;
- Reinforcing the role of the Federal Government as a prudent buyer of services; and
- Restraining the rate of hospital cost increase, thus moderating the outflow of expenditures from the Medicare trust fund.

In addition, we recognize national goals of deficit reduction and restraints on government spending, in general. We believe these proposals will further our goals while maintaining the financial viability of the hospital industry, and assuring access to high quality care for beneficiaries.

We expect these proposed changes to further those objectives while avoiding or minimizing unintended adverse consequences and ensuring that outcomes of this payment system, in general, are reasonable and equitable. Thus, the intent is to refine further the prospective payment system without undercutting our objectives.

C. Problems of Impact Quantification and Attributing Causality

In previously published interim and final rules, we discussed the objectives and impacts of the rules largely in general conceptual terms. We did not always have adequate data, analytic resources, or time to perform a detailed quantitative impact analysis of particular provisions for publication with these previous rules. However, we did solicit comments and information that would enable us to describe and quantify better the anticipated effects of the Medicare prospective payments system.

At present, we still have no adequate way to model potential behavioral changes on the part of hospitals, hospital managers and employees, physicians, suppliers, or beneficiaries. Much of the available Medicare program data reflect only patterns and trends of utilization and payment under cost reimbursement. Where it is feasible and appropriate, we have used this data to model and analyze the effects of particular proposals. Nonetheless, any of the quantitative estimates given below should be received with a qualified recognition of the limitations of the data on which they are based.

We continue to study many aspects of the prospective payment system with the intent of obtaining more adequate data for the purpose of better quantifying the effects of and behavioral changes caused by the payment system. Examples of these initiatives include various reports to Congress, as required by section 603 of Pub. L. 98-21. These studies will examine many issues, including the feasibility and impact of eliminating or phasing out separate urban and rural DRG prospective payment rates and the feasibility and desirability of applying the payment methodology to payment by all payors for inpatient hospital services. We are also required, under section 603(a)(2)(A) of Pub. L. 98-21, to study and report annually to the Congress on the impact of the prospective payment system.

In addition to these initiatives, we and others are undertaking a variety of external studies on the effects of the prospective payment system. One recent external study examined the relationship of severity-of-illness and operating cost differences, and payment inequities, among hospitals. We also are examining selected aspects of hospital management behavior under the prospective payment system, to be able to predict better certain effects and outcomes from the system.

As these studies and reports are completed, and especially as we receive a greater amount of audited cost report data for prospective payment cost reporting periods, we should be able to analyze the dynamics of the prospective payment system better. In turn, the data and information should contribute to establishing an adequate data base to model potential behavioral changes on the part of hospitals, hospital employees, physicians, suppliers and beneficiaries.

A second problem that limits our ability to quantify the effects of this proposed rule is attributing the causation of particular changes in the hospital industry directly to particular proposed regulation provisions. This is made particularly difficult by the changing nature of the health care sector. The prospective payment system is but one of numerous efforts aimed at controlling rapidly rising health care costs. In many cases, then, it may be difficult to determine the extent that the prospective payment system, or some other initiative, caused the result, or whether two (or more) initiatives caused the result interactively.

Apart from the more easily identifiable initiatives that are affecting the health care market, especially on the demand side, changes also have been occurring on the supply side. Most notable of these changes is the increase in the supply of physicians, which enhances the competition for patients among providers. There has also been a significant growth of facilities furnishing out-of-hospital treatment. For example, since 1973, two thousand ambulatory care clinics have opened. We have also certified 265 ambulatory surgicenters, with another hundred awaiting certification. In addition, home health services are the fastest growing component of the Medicare program.

The multiple changes in the health care system require the use of caution in attributing positive or adverse effects to one or another initiative or policy change. However, we can point to the

fact that prospective payment has the advantage of being implemented on a precise schedule, applying to a readily identifiable group of beneficiaries, and at different times for different provisions. Furthermore, the incentives provided by prospective payment are readily identifiable. Thus, to the extent feasible, and as our data resources permit, it is possible to attribute some of the effects resulting from this payment system to the system itself and to proposed changes to its structure.

In view of the problems we have experienced in quantifying impacts and attributing causality, we believe that the approach we are taking in the specific impact discussions below is the best feasible. In some cases we have included quantitative estimates of program savings. However, since it is not possible to develop a reliable quantitative analysis and comparison of the costs and benefits of all the provisions to the various affected parties, we have primarily focused on explaining the kinds of interactions, and the decisions, which those parties will have to consider. As with previous impact analyses, we are soliciting comments and information about the anticipated effects of these proposed changes to the prospective payment system.

D. Hospitals Included in and Excluded From the Prospective Payment System

Since October 1983, hospitals operating under prospective payment have been phasing-in to the system according to their own accounting year starting dates. As of September 1984, 5,045 hospitals (81 percent of all hospitals) were operating under the prospective payment system. This represents virtually 100 percent of all hospitals currently subject to the new payment system. As of March 1985, more than 1,200 hospitals were excluded from the prospective payment system and continue to be paid on the basis of reasonable cost reimbursement. Examples of these hospitals include short-stay hospitals in waiver States, long-term care hospitals, and children's hospitals. Another 1,246 psychiatric rehabilitation and alcohol/drug units of hospitals included in the prospective payment system, are excluded from prospective payment as of the same date.

More than four hundred hospitals were being paid on a special basis under the prospective payment system. They included hospitals accorded special treatment under our regulations at 42 CFR Part 412, Subpart G, such as sole community hospitals and cancer treatment and research hospitals. Also included in this group receiving payment on a special basis are referral centers and hospitals that previously allowed extensive direct billing under Part B.

E. DRG Classification and Weights

1. Recalibration

We are proposing to make certain changes in the DRG classification system and to recalibrate the DRG weights based on 1984 PATBILL charge data. The changes we are proposing are discussed in detail in section II of the preamble.

The advantages of using newer and more complete data from the PATBILL file outweigh both the potential disadvantages of using charges, and the advantages of using currently available cost report data. Charges appear to be a valid measure of relative resource use, at least on the basis of historical data, the existing DRG classifications, and the current methodology for deriving DRG weights. Use of 1984 charge information would also explicitly incorporate the effects of changes in hospital behavior, whereas the 1981 cost data would not.

Since its implementation in October 1983, the prospective payment system has used DRG relative weights calculated by a complex methodology using data from the 1981 MEDPAR file, a 1981 Medicare Cost Report abstract file, and a 1981 hospital wage index based on hospital wage information collected by BLS. These cost-based relative weights were used in the Medicare prospective payment system on the assumption that they would better reflect differences in true resource costs among DRGs than would relative weights derived from charges. However, as discussed in section II of the preamble, charge data have some potential advantages compared to operating cost data. Weights based on charges could be constructed without cost report data, which is typically two to three years old before it becomes available for analysis. Charge-based relative weights are also simpler to compute, since complex adjustments are not required to convert charges to costs and to remove capital and medical education costs. Because of these potential advantages of charge-based weights, we initiated a study to determine whether it would be feasible to recalibrate the DRG relative weights on the basis of charges rather than costs.*

Using the 1981 data upon which the prospective payment system was based, this study investigated the extent to which relative weights based on costs differ from relative weights derived exclusively from charge data. The study also assessed the validity of a case-mix index developed from charge-based relative weights as a measure of the relative costliness of a hospital's Medicare cases. The main findings of the analysis indicate that charge-based and operating cost relative weights, based on 1981 MEDPAR data, are very similar, as follows:

- The difference between relative weights based on operating costs and relative weights based on total charges is less than five percent for most of the DRGs.
- The structure of the relative weights across DRGs for each method are also very similar. The Spearman and Pearson correlation coefficients are greater than .99.
- The relative dispersion of costs or charges within a DRG are also very similar, although for most DRGs the coefficients of variation are slightly higher using charge data than the coefficients of variation using cost data.
- The dispersion of average costs or charges across DRGs are also very similar. However, DRGs with high (low) relative weights tend to have slightly higher (lower) relative weights if computed using charge data rather than cost data.
- Large, urban hospitals and teaching hospitals tend to have slightly higher case-mix index values using charge-based weights rather than cost-based weights, whereas small, rural hospitals and nonteaching hospitals tend to have slightly lower case-mix index values using charge-based weights.

The results of the analysis support the use of charge data in constructing DRG relative weights. We believe that differences among hospitals in cost-to-charge ratios do not result in large, arbitrary differences between charge-based and operating cost weights, but we seek comments on this issue.

Whether the data are standardized for differences in capital and medical education costs also appears to make little difference. These inter-hospital differences would only affect the DRG relative weights if there were a high degree of specialization among hospitals in different groups of DRGs they treat. Our results indicate that, in 1981, hospitals' case mixes were similar enough that most inter-hospital effects disappear when the data are partitioned by DRG.

*Philip Cotterill, Joel Bobula, and Rose Connerton, "A Comparison of Alternative DRG Relative Weights for the Medicare Prospective Payment System," HCFA internal working paper, February 1985.

In addition, we analyzed the relationship between hospitals' case-mix index values constructed from the charge-based relative weights and average Medicare cost per case based on multivariate regression analysis of hospitals' 1981 operating costs per case. The charge-based case-mix index was found to be approximately proportional to the expected costliness of an individual hospital's Medicare patient mix. This result further supports the study's major finding that there do not appear to be large differences between charge-based and cost-based weights, or between case-mix indexes constructed from charge-based or cost-based weights.

2. Proposed New Weight Values

Table 5 in section IV of the Addendum to this proposed rule sets forth the proposed recalibrated DRG weights. This table reflects all the reclassifications and GROUPER changes discussed in section II of the preamble. The proposed DRG weights are highly correlated with the published FY 1985 DRG weights. The Pearson correlation coefficient for the two sets of relative weights is 95.

The changes in values for particular DRGs are affected by a number of factors other than the use of charge data. In fact, we believe that the use of charge data accounts for a smaller portion of the change in weights than some of the other factors. The changes are accounted for largely by GROUPER changes and behavioral changes that are reflected in the more recent data base.

Approximately 82 percent of FY 1984 discharges fall into DRGs for which the proposed weights would differ from the current FY 1985 weights by less than 15 percent. Nonetheless, 128 DRGs have proposed weights that would differ from their current weights by 15 percent or more. Of these, 61 would increase and 67 decrease. Only about 4 percent of all FY 1984 discharges occured in DRGs with weights that would decrease more than 15 percent, whereas about 10 percent occurred in DRGs with more than a 15 percent increase.

Many of the DRGs that show weight changes of more than 15 percent have relatively low Medicare case frequencies. Thirty-nine of the DRGs that would go up more than 15 percent are DRGs for which non/Medicare data was used to calculate their previous weights. These 39 DRGs account for only about 2.5 percent of the cases that fall into the 61 DRGs that would increase by more than 15 percent. More than half of the cases in the 61 high-increase DRGs are in only 2 DRGs: DRG 39 (lens procedures) would increase 16.4 percent and DRG 468 (unrelated OR procedure) would increase 16.9 percent. Nonetheless, only 3 of the 25 most common DRGs (including DRGs 39 and 468) would increase by 10 percent or more.

Each hospital will have to assess the effect of the proposed DRG weights for itself. As noted elsewhere, the general tendency of the recalibration is to decompress both charge weights and case mix indexes, so that the higher ones are on the average, a little higher, and the lower ones are, on the average a little lower. However, the degree to which this may occur will vary from case to case. Further, changes in the DRG weights would interact with changes in Federal rates, wage indexes, and the blending of Federal and hospital-specific portions. (See additional discussion in section I below.)

3. Alcohol and Drug-Related DRG Reclassificaiton

As of March 1985, 28 hospitals and 28 units that furnish alcohol and drug services have been excluded from the propsective payment system under §§ 412.23 and 412.32 of our regulations. Exclusion was afforded these hospitals and units on a temporary basis because of difficulties assoctated with implementation of DRGs for the major diagnostic category (MDC) related to alcohol and drug-related services. We are proposing to reclassify these DRGs to better reflect the patterns of practice in alcohol and drug detoxification and rehabilitation services. As a result, these hospitals and units would no longer be excluded from the prospective payment system effective with cost reporting periods beginning on or after October 1, 1985.

We are proposing to replace the six DRGs in the previous classification for this MDC with five DRGs. The proposed weights for DRGs 436 and 437 (rehabilitation therapy and combined detoxification and rehabilitation treatment) are higher than the weights for treatment without rehabilitation. However, there are many more cases in the DRGs for treatment without rehabilitation (DRGs 433 to 435). As a result, the average weight for the cases in the proposed alcohol and drug-related MDC, taken as a whole, would decline about 4.8 percent.

The proposed DRG weights would be applied to alcohol and drug-related services furnished by hospitals currently under the prospective payment system, as well as to currently excluded hospitals and units as they reenter the system.

F. Wage Index

1. Background

As discussed in section III of the preamble, the proposed rule incorporates a new wage index based on our own survey data rather than on the hospital wage and employment data obtained from the ES 202 reporting system of BLS. The new survey-based wage index wold be applied in two ways:

- Prospectively, to adjust the Federal rates (adjusted average standardized amounts) to account for differences between area wage levels; and
- Retrospectively, to determine overpayments and underpayments resulting form the use of a wage index based on BLS data since the implementation of the prospective payment system for cost reporting periods beginning on or after October 1, 1983.

The proposed wage index is discussed in detail in the *Report on Hosptial Wage Index Required by Section 2316(a) of Public Law 98–369*, submitted to Congress by the Department on March 29, 1985. That report includes detailed estimates of the effects of implementing the proposed index and an alternative wage index that we considered using, based on certain adjustments to the survey data to exclude wages and salaries for certain classes of hospital employees.

2. Comparison of the BLS Index and the Proposed Index

Despite some rather significant differences between the BLS index currently used under the prospective payment system and the proposed survey-based wage index, the proposed index correlated highly with the BLS index. That is, both indexes appear to measure similar activity and demonstrate similar variability. (Specifically, the proposed wage index, when correlated with the current index, produced a Pearson correlation coefficient of 0.85.)

The table below presents a summary of the changes in the survey wage index values compared to those developed from 1981 BLS ES 202 hospital data. Note that this analysis was taken from the Wage Index Report to Congress, which was developed before the St. Louis MSA was consolidated with two other MSAs. Therefore, the analysis reflects 363 urban/rural areas, rather than the current 361 areas.

As expected, use of survey data rather than BLS data produces both increases and decreases across the 363 urban and rural areas; that is, the index for some

areas goes up relative to the BLS index, and the index goes down for other areas. For the 363 urban/rural areas, the proposed new wage index is *lower* than the current wage index for 166 urban areas and for the rural areas of 21 States. In those areas where the proposed index decreased, the amount of the decrease averaged 5.23 percent in urban areas and 4.70 percent in rural areas. The proposed new wage index increased in 149 urban and 27 rural areas, as compared with the current index.

COMPARISON OF SURVEY-BASED AND CURRENTLY USED BLS HOSPITAL WAGE INDEXES

(Number of areas affected)

	Proposed index higher	Avg. percent change	Proposed index lower	Avg. percent change
Urban	149	5.00	166	5.23
Rural	27	6.04	21	4.70
Overall	176	5.14	187	5.17

There are a number of reasons that could be presented for the changes that occurred in the proposed survey-based index compared to the current BLS index. Certain of these changes most likely are due to the fact that the proposed index corrects the part-time employment problem of the BLS data. Intuitively, one would expect that the incidence of the use of part-time employees in more common in rural areas than in urban areas, although not all rural and urban areas react the same way to this need. Rural hospitals are more susceptible to small-scale changes in their occupancy levels, and using part-time employees likely gives these hospitals more managerial control. Thus, it is not surprising to note that for rural Nebraska, the proposed index value is higher than the BLS index value. A similar situation holds for rural Iowa.

Conversely, if urban hospitals are more likely to employ full-time workers, then a BLS wage index that essentially counts all employees as full-time would tend to advantage urban over rural hospitals. Once part-time employees are recognized, one would expect that a number of urban wage indexes would decline as compared to the BLS index. In fact, this is what happens in a significant number of urban areas.

3. Prospective Impact of the Proposed New Index

Implementation of the survey-based gross wage index prospectively for cost reporting periods beginning on or after October 1, 1985 would have several effects. Of course, each hospital would be relatively advantaged or disadvantaged according to whether the index value for its geographic area increased or decreased. (Note, however, that a number of other factors would affect whether a hospital's actual total prospective payment revenue increased or decreased.) In addition, the new index would be used to restandardize the standardized amounts on which the Federal national and regional rates are based. This should have a negligible effect on the national urban and rural rates, but would affect the relative level of regional rates significantly.

Since FY 1986 is the last year during which regional rates will be included in the blended Federal rates, this secondary impact of the new index would be time-limited. Nonetheless, for FY 1986, some regional rates would go up and others would go down, with concomitant advantages and disadvantages for affected hospitals.

All hospitals under the prospective payment system would be affected, although some only slightly. For FY 1986, affected hospitals would fall into four groups, as follows:

- Those doubly advantaged by increases to both their wage index values and their regional rates;
- Those doubly disadvantaged by decreases to both their wage index values and their regional rates;
- Those advantaged by an increased wage index value and relatively disadvantaged by a revised regional rate; and
- Those disadvantaged by a decreased wage index value and relatively advantaged by a revised regional rate.

In addition, the changes to the wage index would interact with proposed changes to the DRG weights, the effects of the increased proportion of the national rate in the Federal rate, and the change in blending proportions between Federal and hospital-specific portions. (For further discussion, see section J, below, especially the table summarizing the anticipated percent payment changes for FY 1986.

4. Retroactive Impact of the Proposed New Index

Under section 2316(b) of Public Law 98-369, any new wage index that is adopted as a result of the study conducted in accordance with section 2316(a) must be implemented retroactively for hospital cost reporting periods beginning on or after October 1, 1983.

Assuming that a revised wage index is implemented effective October 1, 1985, some hospitals (that is, those whose reporting periods began October 1, 1983) will have been paid using the BLS index for two full years. If a hospital's payments based on a revised wage index would have been higher than its payments using the current index, the Medicare program would have to compensate the hospital for the underpayments. Conversely, where a hospital has been overpaid using the current index compared to what it would have been paid if a revised index had been used, the program would have to recoup the overpayments that have been made.

Section 2316(b) of Public Law 98-369 provides that any resulting overpayments or underpayments "for the first cost reporting period" for which a hospital is subject to the prospective payment system shall be adjusted "in the succeeding cost reporting period." This language would appear to have originated from Congress' expectation that a revised wage index would be in place in time for the FY 1985 update of the system. Under these circumstances, payment adjustments only would have been required for that portion of a hospital's first fiscal year under the prospective payment system and could have been implemented effective with the succeeding cost reporting period. However, the need to follow-up on the wage index survey due to unsatisfactory initial results has delayed the development of a revised index. The prospective payment rates effective October 1, 1984 presently incorporate a wage index derived from BLS data. Therefore, retroactive application of a revised wage index, effective Octoter 1, 1983 would result in the creation of overpayments/underpayments for more than one year.

In order to assess the financial consequences for hospitals subject to the prospective payment system if the proposed new wage index were implemented retroactively to October 1, 1983, we prepared estimates of impact for each urban/rural locale using the index values developed from the survey. These area impact estimates assume a new wage index would be adopted October 1, 1985, retroactive to October 1, 1983. Thus, overpayments and underpayments are estimated for the period October 1, 1983 through September 30, 1985. These impact estimates and the assumptions underlying them are included in the above-cited report to Congress. The report to Congress did not include estimates of the effects of the proposed wage index on FY 1986 payments because at that time we had not yet developed the applicable Federal rates and proposed DRG weights. Now such estimates are possible, and section J of this appendix includes a table summarizing, by census region, urban/

rural location, and bed size, the projected percent change that would result from the proposed DRG weights and wage index. Because we would collect overpayments and pay underpayments resulting from retroactive application of the wage index in FY 1986, that table also includes our estimate of the effect that retroactive application would have on total payments for affected groups of hospitals.

To illustrate the impact on hospitals in a given locale, we have focused on the Charlottesville, Virginia MSA, an area that would incur a substantial reduction in prospective payments were the proposed wage index implemented. The wage index for the Charlottesville, Virginia MSA would decline from the 1.2899 BLS index to a survey-based index of .9287. Over the period from October 1, 1983 through September 30, 1985, hospitals in that MSA, assuming an average case mix (that is, a case-mix index of 1.0), and without regard to any teaching activity, would have been overpaid an estimated $3,670,977. The average reductions in the Federal rates over all discharges in that MSA for the first two years under the prospective payment system through September 30, 1985 are 21.95 and 22.08 percent, respectively.

Before proceeding further, it should be noted here what these overpayment figures actually represent. While the difference that would occur in the Federal rates in the Charlottesville MSA using the new index compared to the BLS index is $768 in the first year of the prospective payment system and $794 in the second year, the actual dollar amount of the overpayment for these two years is less than what would result from simply multiplying the dollar difference by the number of discharges. This is because the wage index is applied *only* to the Federal rate, and the Federal rates comprised only 25 percent of a hospital's prospective payment rate for a cost reporting period that began in FY 1984, and 50 percent for a cost reporting period that began in FY 1985. When analyzing these figures, it should also be noted that not all hospitals use the Federal fiscal year as their own fiscal year. Therefore, if a new index were implemented and applied retroactively beginning October 1, 1985, only those hospitals that have the same fiscal year as the Federal government would have had two full years using the BLS index. Other hospitals would have had one full first year and varying proportions of a second year, depending upon their individual fiscal years. Because of hospital specific differences in case mix and teaching activity, the actual dollar impact within an area will also differ from hospital to hospital depending upon the magnitude of the case mix index and the degree of teaching activity.

Example

Hospital A is the only hospital in the hypothetical Simpsonville MSA. Because of the size of the decline in the Simpsonville survey-based wage index compared to the current BLS index, hospital A's estimated reduction in prospective payments during the period October 1, 1983 through September 30, 1985, without regard to case mix and teaching activity, is $1,000,000. Hospital A, however, has a case-mix index value of 1.2 and an indirect medical education adjustment factor of 1.1. The actual decrease in hospital A's prospective payments is equal to:

$1,000,000 × 1.2 × 1.1 = $1,320,000

If hospital A were not a teaching institution and had a case-mix index value of .9, the estimated impact would be equal to $1,000,000 × .9, or $900,000.

We point out that while the actual impact of implementing the proposed wage index would be affected by a facility's case mix and degree of commitment to teaching, the percentage change in the Federal rates is unaffected when these two variables are considered. This is so because the effects of case mix and teaching activity on the Federal rates computed using the BLS and proposed new wage indexes are presumed to be constant for each hospital's fiscal year.

While there are areas that would incur substantial overpayments if the proposed wage index were implemented, there are others, of course, that would benefit because of underpayments due. For example, rural hospitals in North Dakota would receive $823,049 or $31 per discharge, if the proposed wage index were applied to all discharges under the prospective payment system since October 1, 1983.

Retroactive application of the revised wage index would require reconciliation of any overpayments/underpayments that occurred from use of the BLS wage index. This could be accomplished in a variety of ways. As discussed in section III of the preamble, our preference is to have all overpayment and underpayments repaid in 26 equal payments during FY 1986. This would ensure that payments made by HCFA to repay underpayments would be roughly balanced by receipt of payments by hospitals repaying overpayments. The symmetrical flow of these payments would protect the Part A Trust Fund from undue fiscal stress. However, we recognize other methods are feasible, and have solicited comments and suggestions.

For discharges occurring after implementation of the new index (that is, after October 1, 1985), the per-discharge payment could be decreased or increased so as to accomplish full reconciliation of the previously overpaid/underpaid amounts within one year. Of course, implementation of a new wage index would also have a prospective impact on discharges occurring after implementation. Thus, hospitals in an area whose new wage index results in lower prospective payments than the one used to make payment for discharges occurring during the first two years of the prospective payment system would receive *lower* reimbursement for future discharges than would have occurred using the previous BLS index values. This would occur *at the same time* that payments are adjusted lower still to recoup previously overpaid amounts. An alternative to the above reconciliation procedure would be lump-sum recoupment/payment of previously overpaid/underpaid amounts.

For example, assuming that, under current law, the Medicare program would be required to collect the Charlottesville overpayment of $3,670,977 during the 12-month period beginning October 1, 1985 (that is, the assumed implementation date of a revised index), we estimate that the per-discharge impact due to the revised wage index would be approximately $392 per discharge (that is $3,670,977 divided by 9,359, the reported Medicare discharges for the Charlottesville MSA for calendar year 1983). (This figure takes into account *only* the differences due to the wage index and the difference in the regional/national blend between the first and second years of the system. The actual amount of the overpayment in the Charlottesville MSA would be different from this figure due to the multiplicative effect of other adjustments, such as the case-mix index. To the extent the average case-mix index value for a Charlottesville hospital is above one (1) the overpayment would be greater than stated here. The converse would be true if the average case-mix index value were less than one (1).)

G. Excluded Hospitals

As discussed in section III. of the Addendum, we are proposing to increase the target amounts for hospitals and units excluded from the prospective payment system by a target-rate percentage of 0.0 percent. In effect, this means that for cost reporting periods beginning in FY 1986, each hospital or unit, subject to the rate-of-increase

limits (§ 405.463) would have a ceiling equal to the ceiling for its previous cost reporting period. We estimate that this would result in $20 million in savings for FY 1986 Medicare Part A expenditures, compared to the maximum level of expenditures allowable under law.

The effect this proposal would have on affected hospitals and units would vary depending on each one's existing relationship of costs per discharge to its target amount for FY 1985, the increase in inpatient costs, and the relative gains in productivity (efficiency) the hospital or unit is able to achieve. For hospitals and units that continue to achieve per discharge costs lower than their target amounts, the primary impact would be a reduction of the level of additional payments made under § 405.463(d)(2) proportional to the increase in per-discharge costs. For hospitals and units whose costs are currently in excess of their target amounts, we would expect FY 1986 excess costs to increase, unless the hospitals are able to achieve significant productivity improvements.

In general, we expect this proposal to increase existing incentives for economy and efficiency experienced by excluded hospitals and units. We do not believe that even these proposed limits would achieve incentives comparable to those produced by the prospective payment system. Therefore, we will, as required under the law, continue to study means for establishing an appropriate prospective payment methodology for those hospitals and units that are currently excluded from the prospective payment system. Nonetheless, we believe this proposal would ensure that services furnished to beneficiaries by affected hospitals and units would, for the most part, be paid for at a level no higher than necessary for the efficient delivery of needed health services.

H. Indirect Medical Education Costs

The changes we are proposing to make in the regulation governing payment for the indirect costs of medical education would have only a slight effect on the level of those payments.

We considered making other changes in the methodology for calculating the indirect medical education cost adjustment factor. We are concerned that the current factor, when doubled as required by section 1886(d)(5)(B) of the Act, results in substantial overpayments to teaching hospitals, exceeding significantly their probable real indirect costs for their medical education programs. We estimate that eliminating the doubling of the education adjustment factor would save $695 million in FY 1986 and more in each later year.

The President's FY 1986 budget includes a proposal that, if enacted, would return the formula for calculating the indirect costs of medical education to the previous level. If this proposal is enacted timely enough, we plan to implement the change for discharges beginning October 1, 1985.

I. Referral Centers

As discussed in section IV. E. of the preamble to this proposed rule, we are proposing to update the case-mix criteria for hospitals to qualify as referral centers under our regulations at § 412.96(c). Currently, there are about 135 referral centers, all of them rural hospitals that are paid, under the prospective payment system, on the basis of urban standardized amounts as a result of their referral center status. We continue to identify more referral centers and expect more to meet the criteria effective for FY 1985 before October 1, 1985.

More than 95 percent of the referral centers are eligible for higher payment because they meet the criteria of § 412.96(c) rather than those of § 412.96(b). These criteria refer to case-mix index, number of discharges, medical staff, source of inpatients, and volume of referrals. Each qualifying hospital must meet both the case-mix and discharge criteria, and at least one of the other criteria. Thus, the level at which the case-mix criterion is set could often be the deciding factor in whether a specific hospital can demonstrate that it has met the criteria two out of three years at the time of its triennial review.

We expect that a substantial number of the current referral centers would not meet the proposed case-mix criterion for FY 1986. Assuming that all current referral centers have met the criteria for FY 1985, the continuation of their special payment status would then depend on whether they met the FY 1987 criteria. If a rural hospital that had been treated as a referral center met neither the FY 1986 nor the FY 1987 criteria, it would be paid on the basis of the Federal rural rate for its FY 1988 cost reporting period.

At this time, we are unable to determine how many hospitals may eventually lose their referral center status as a result of the proposed FY 1986 case-mix criterion. However, we believe the proposed criterion will afford us a reasonable measure of the degree to which hospitals seeking special treatment under this provision differ from the average rural hospital.

J. Updated Payment Rates and Resulting FY 1986 Payment Amounts

One of the primary functions of this document is to publish updated prospective payment rates in accordance with requirements in the law and regulations (section 1886(d) of the Act and § 412.8 of the regulations). Accordingly, the Addendum to this document, which is printed after the text of the propopsed changes in 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 1986 will be a blend set at 50 percent of the Federal regional rate plus 50 percent of the Federal national rate. This blend will take effect for all Federal rates for all discharges occurring on or after October 1, 1985. Further, as each hospital begins its third year under prospective payment, with its cost reporting period beginning on or after October 1, 1985, the relative proportions of hospital-specific and Federal portions will change from 50 percent and 50 percent, respectively, to 25 percent hospital-specific and 75 percent Federal.

In FY 1986, for the first time, the updated Federal rates (that is, the adjusted average standardized amounts) will not be adjusted to achieve "budget neutrality". Under section 1886(e)(1) of the Act, for FYs 1984 and 1985, the rates were adjusted so that estimated aggregate payments for inpatient hospital services would be the same as they would have been had the Medicare payment system in effect at the time of the prospective payment legislation continued in effect. This requirement for budget neutrality does not apply to rates for FY 1986 and thereafter.

In determining the level of the payments and the adjustment factors to be applied to them, such as DRG weights and wage indexes, two issues of impact are paramount: the size of the prospective payment pie, which may be expressed in terms of either the average payment per case or the estimated total expenditures, and how that pie will be cut, that is, how payments will be distributed among DRGs or hospitals. Under budget neutrality, the size of the pie, expressed as average payment per case, was, to the extent it could be predicted and controlled, prescribed by law. As a result, in assessing the impacts of the proposed rates, adjustments, and special treatment provisions of previous proposed rules, we focused primarily on the distributive

effects of our proposals. This year, however, our primary concern is the proper level of payments, and the major alternatives we considered in setting the proposed payment rates were assessed in light of this concern.

By the end of 1984, we realized that, despite our best efforts to achieve budget neutrality, the FY 1985 prospective payment rates were too high. As a result, in preparing the President's budget, we assumed that the FY 1986 payment rates would be maintained at the FY 1985 level.* At that time, we did not realize that later data and experience would show that we would have substantial legal and technical justification to actually reduce the rates.

In the end, we had to choose among a fairly wide range of potential percentage changes. The hypothetical upper end was constrained by the legal requirement, under section 1886(b)(3)(B) of the Act, that rates for FY 1986 be increased by no more than the forecasted market basket increase plus one quarter of one percentage point. Thus, the highest conceivable increase for the FY 1986 prospective payment rates was +5.1 percent.

On the other hand, as explained in section II.A.3. of the Addendum to the proposed rule, we had a number of reasons for finding the FY 1985 prospective payment rates too high. Considering the combined effect of case-mix increases, market basket forecasting error, inaccurate cost per case assumptions, and the consequences of using unaudited cost data as a basis for rate-setting, the FY 1985 rates are probably overstated by at least 8.5 percent.

*U.S. Budget in Brief, Fiscal Year 1986. Executive Office of the President, Office of Management and Budget, Washington, D.C. February 4, 1985. Page 45.

ProPAC's first recommendation was a major alternative that had to be considered. It recommended increasing the FY 1985 rates by the forecasted market basket increase, minus one percentage point, plus an allowance for the estimated increase in real case-mix complexity during fiscal year 1985. It described the negative one percentage point, or "discretionary adjustment factor," as a combined adjustment of a positive allowance for scientific and technological advancement and a negative allowance for productivity improvement and hospital product change. It also recommended that we make corrections for market basket forecasting error. In essence, by identifying a number of factors to be considered in determining an update percentage, including both negative and positive values, ProPAC performed an analysis very similar to ours.

In considering the same kinds of things as ProPAC did in developing its proposed discretionary adjustment factor, we developed categories and allowances with some analytic differences, but nonetheless arrived at a proposed policy target adjustment factor of −1.5 percentage points, in lieu of their −1.0 percentage point factor.

In theory, it would be possible to choose to combine the various corrections, adjustments, and inflation factors in a variety of combinations, yielding nearly any percentage change between +5.1 percent and −8.5 percent. However, we believe the preponderance of the evidence, including recent industry reports on hospital profitability margins, shows that current payments are already set at levels that are at least adequate. Accordingly, in section II.A.3. of the Addendum, we set forth the factors we believe are best, and show that these factors, in combination, would result in a −2.85 percent reduction of the FY 1986 prospective payment rates. For the reasons given in the Addendum, we are proposing to maintain FY 1986 Federal rates at the same level as FY 1985.

The proposed Federal rates would change only as a result of restandardization of the base data to reflect the survey-based gross wage index. Further, as explained in section II. D. of the Addendum, we are not proposing to increase the hospital-specific rates for cost reporting periods beginning in FY 1986. As a result, the amounts a hospital would expect to receive from prospective payments for FY 1986 discharges would change as a result of the effects of the proposed new wage index, the proposed new DRG weights, and the statutorily required changes in blending of Federal and hospital-specific portions.

We have projected the separate and combined expected effects of these changes on payments of census regions, urban/rural status, and bed-size. This estimate of payment changes is based on 4962 hospitals with Medicare discharges in the PATBILL file and for which hospital-specific information (hospital-specific rates, resident/bed ratios, rural referral center status, and so forth) was provided by the fiscal intermediaries. We did not include any hospitals from waiver States (Maryland, Massachusetts, New Jersey, New York) or hospitals excluded from the prospective payment system. This projection also reflects the impact of the statutorily required retroactive application of the survey-based wage index. (As explained in section III of the preamble to this proposed rule, we are deeply concerned about the effects of such retroactive application, which are discussed in section F.4. of this appendix.) The following table summarizes our findings.

TABLE-ESTIMATED IMPACT OF PROPOSED CHARGE WEIGHTS, THE PROPOSED SURVEY-BASED WAGE INDEX, AND THE FY 1986 PAYMENT BLEND ON FY 1986 OPERATING PAYMENTS

	Percent Change in Total Payments for FY 1986 Due to:					
	Proposed DRG Weights	Proposed Wage Index 1/	FY 1986 HSP-FED Blend 2/	Combined Prospective Effects	Retroactive Wage Index Application	Total Combined Effects
All Hospitals	0.11%	-0.03%	0.01%	0.07%	-0.03%	0.04%
By Census Regions						
New England	0.49	0.38	1.38	2.83	0.49	3.32
Mid Atlantic	0.53	-0.48	0.86	0.42	-0.56	-0.14
South Atlantic	-0.12	-0.44	0.91	-0.32	-0.54	-0.86
East North Central	-0.03	-0.14	-0.26	-0.44	-0.16	-0.60
East South Central	-0.33	0.12	1.86	0.88	0.31	1.19
West North Central	0.26	-0.23	-1.02	0.14	0.24	0.38
West South Central	-0.19	-0.13	-0.31	-1.04	-0.11	-1.15
Mountain	0.17	-0.07	-0.41	-0.43	-0.07	-0.50
Pacific	0.49	0.48	-0.95	0.90	0.54	1.44
Urban Hospitals	0.26	0.00	0.08	0.37	0.01	0.38
0-99 Beds	-0.33	0.17	2.43	2.47	0.23	2.70
100-404 Beds	0.15	0.06	-0.29	0.02	0.07	0.09
405-684 Beds	0.38	0.04	0.36	0.81	0.05	0.86
685 + Beds	0.66	-0.39	0.00	-0.04	-0.51	-0.55
Rural Hospitals	-0.60	-0.20	-0.32	-1.34	-0.23	-1.57
0-99 Beds	-0.11	-0.03	0.02	-1.18	-0.03	-1.21
100-169 Beds	-0.44	-0.15	-1.33	-2.14	-0.16	-2.30
170 + Beds	-0.05	-0.45	0.08	-0.88	-0.54	-1.42

1/ Prospective application only.

2/ The effect of the change in blend combines two effects. The new Federal rate blend (50 percent national rate and 50 percent regional rate) is effective for all discharges occurring on or after October 1, 1985, and therefore affects all FY 1986 payments. The new blend of the hospital-specific portion (HSP) and the Federal rate (FEP) will take effect as each hospital begins its FY 1986 cost reporting period.

Note that the magnitude of the changes is generally small and that changes to DRG weights and wage indexes would often offset each other. Nevertheless, it is clear that some groups would be advantaged and others disadvantaged. Generally, large urban hospitals in New England or on the Pacific coast would be benefited most by these changes. Small rural hospitals, especially those in the South, would be disadvantaged most.

The change in blending gives more effect to the Federal national rates and less to hospital-specific rates. Thus, a hospital's payments would be affected by the relation between its Federal national rate and its hospital-specific rate. If the applicable Federal rate is higher, a hospital would benefit; if lower, it would be disadvantaged. Even if the payment rates are maintained at the same level for FY 1986, we expect the average payment per case to increase, because many FY 1985 discharges were for hospitals with cost reporting periods beginning in FY 1984, and thus were paid for using a lower hospital-specific rate.

K. Conforming and Minor Proposed Regulation Changes

We are proposing several other regulations changes that would have relatively minor impacts.

- The revisions to the medical review regulations to conform to the recently published PRO regulations would not have a significant effect on provider revenues.
- The elimination of the prepayment review requirement for all cost outlier payment claims would be administratively simpler for us and for the hospitals, and would give the hospitals quicker payment, but would not effect aggregate revenues significantly.
- The clarification of when hospitals may send denial notices to beneficiaries does not represent a change of policy. It may benefit beneficiaries who might otherwise be sent an inappropriate notice, or hospitals who may not have sent an appropriate notice.

L. Quality of and Access to Care

As we have stated on other occasions, the prospective payment system endeavors to change hospital behavior through financial incentives. While our goals are essentially economic, we are also acutely concerned that for some hospitals economic incentives might, in some cases, overshadow concerns for the quality of care delivered and access to appropriate services and levels of services.

There are a number of public and private programs involved in evaluating the quality of hospital care. Utilization and Quality Control Peer Review Organizations (PROs) have, under contract with the Health Care Financing Administration, responsibility for evaluating whether the quality of services meets professionally recognized standards of health care and may intervene to correct various patient care problems. In addition, we survey

hospitals for compliance with the health and safety requirements of the conditions of participation for hospitals participating in the Medicare program (42 CFR Subpart J). (Accredited hospitals are deemed to meet almost all of those requirements.) There are additional Federal programs involved in review of specific areas such as radiation safety and infectious diseases. Voluntary second-opinion programs and the efforts of PROs appear to have contributed to a decline in unnecessary surgery.

On the State level, health departments enforce a variety of facility and professional licensure requirements aimed at reducing health care risks and ensuring that only appropriately trained personnel provide services.

Numerous private programs are involved in quality issues. The Joint Commission on Accreditation of Hospitals and the American Osteopathic Association accredit facilities meeting their high standards of care. Almost all of the health professions themselves have and review professional standards of practice. Finally, health care literature suggests that a large number of special research projects are underway, publicly and privately financed, and aimed at measuring various aspects of the quality of hospital care.

We do not at the present time have objective data demonstrating that the quality of or access to care has declined. We have noted a significant decrease in average length-of-stay, a slight decrease in admissions, and an increase in average case mix. The hospital delivery system seems to be adjusting to prospective payment generally as we anticipated, at least as measured by utilization and consumption of resources.

To date, there is no systematic evidence linking the behavioral changes that have taken place to any of the potential problems in quality that some expected to result from the changed incentives (for example, shift of acutely ill patients to lower-level providers unable to furnish necessary care, or inappropriate reductions of diagnostic testing or support services). Moderate shifting of patients to less expensive environments has occurred, but the extent of such shifting is not yet conclusive. However, we have seen no data showing an increased number of deaths or complications as a result. Simply stated, a shorter stay in the hospital has not equated to lower quality care. There may be reason to believe that, in many instances, shorter stays expose patients to fewer risks.

Ensuring proper access to care is of great concern to us. It is possible that the prospective payment system may in time create incentives for hospitals to establish more outreach programs, expand outpatient services, and form delivery systems to reach populations that were once ignored. To some extent, this seems to be occurring. The hospital industry's literature encourages hospitals to develop outreach programs and frequently suggests that these will strengthen a hospital's financial picture.

The issues of quality and access are particularly important to certain subgroups of enrollees. Disabled enrollees (especially aged and disabled), ESRD enrollees, and those dually entitled to Medicare and Medicaid coverage ("crossovers") have certain health and socio-economic characteristecs that make them particularly vulnerable to changes in health care programs. For example, ESRD enrollees are hospitalized at a rate three times as often as other enrollees. Also, we know that the dually eligible are characterized by higher hospital utilization and cost relative to other aged enrollees. In 1983, this group represented 2.6 million beneficiaries, or about 11 percent of an estimated 23.5 million noninstitutionalized aged persons covered by Medicare. Thus, a significant portion of the Medicare beneficiary population is particularly sensitive to changes in health care programs and we must ensure that their health care needs are met.

We believe that growth in health care expenditures can be restrained without harming patients. In the short-term, we have proper safeguards in place to protect patients. On a long-term basis, there are mechanisms (both public and private) that will enable us to recognize potential problem areas and respond through appropriate changes in policy. The changes proposed in this document essentially represent further refinement of the basic prospective payment system. We do not believe any of these changes will create new problems in quality or alter the incentives that might add risks to patient care.

M. Alternatives Considered

Throughout the discussions in the preamble and this analysis, we have explained why we are proposing to do one thing rather than another. As noted in section I.B. of the preamble, as part of our analysis we have been considering various approaches to updating DRG weights and wage indexes while trying to minimize fluctuations of payments. Many interrelated decisions are involved in this process, and the number of possible combinations of different wage indexes, different DRG weights, and different update factors, is large. Further, there are additional alternatives that had to be considered within each of the key technical methodologies for deriving the proposed wage index, DRG weights, and Federal rates. Altogether, there are a potentially enormous number of permutations.

Nonetheless, we have been particularly concerned with the impact of certain main options, and we have reviewed them in the light of how they would interact with each other. These include, for example, using unstandardized DRG weights, rather than weights standardized for geographic wage differences. This would have had the effect of "decompressing" average case mix relative to standardized weights, and would have disadvantaged rural hospitals. We also considered all the ProPAC recommendations. Each of the factors taken into consideration in the development of the proposed FY 1986 standardized amounts was challenged and debated both individually and in combination with other factors.

N. Summary and Conclusions

E.O. 12291 requires us to assess the benefits, costs, and net benefits of all rules, major or otherwise. For major rules, we must discuss those costs and benefits in impact analyses, and show that the potential benefits outweigh the potential cost to society. In addition, we must discuss alternative methods of achieving the objectives we propose in our regulations. Throughout the preamble, addendum, and other sections of this impact analysis, such alternatives are discussed. In this summary, we assess the overall costs of the proposals we are making, the overall benefits, and the resulting net benefits.

For the most part, the costs and disadvantages that could result from these proposals would take the form of reductions in anticipated revenue to affected hospitals. Most of the proposals would have their major effect through their influence on the level of FY 1986 prospective payments. The only significant exception would be the retroactive application of the proposed wage index.

As we have said before, the primary benefit expected to result from this proposed rule 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 proposals is to refine the prospective payment system. Whereas the system as a whole has had a large and dramatic impact, the proposed refinements are of a marginal nature, rather than large-scale adjustments.

We believe that, from this perspective, the overall benefits to society, including the substantial benefit of improved budgetary control, more than offset any resulting liabilities. For the above reasons, we believe that this analysis meets the objectives of E.O. 12291 and the Regulatory Flexibility Act as noted in the Introduction to the Regulatory Impact Analysis.

Appendix B—A Framework for Analyzing Rate Increase Factors*

A. Overview

Section 1886(e)(4) of the Act requires the Secretary to update individual DRG rates beginning in FY 1986, taking into account the recommendations of the Prospective Payment Assessment Commission (ProPAC). Section 1886(e)(4) of the Act reads as follows:

> (4) Taking into consideration the recommendations of the Commission (that is, the Prospective Payment Assessment Commission, or ProPAC) the Secretary shall determine for each fiscal year (beginning with fiscal year 1986) the percentage change which will apply for the purposes of this section as the applicable percentage increase (otherwise described in subsection (b)(3)(B)) for discharges in that fiscal year, and which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality.
>
> As prescribed by section 1886(e)(2) of the Act, the Commission, in making its recommendations to the Secretary, "shall take into account changes in the hospital market-basket described in subsection (b)(3)(B), hospital productivity, technological and scientific advances, the quality of health care provided in hospitals (including the quality and skill level of professional nursing required to maintain quality care), and long-term cost-effectiveness in the provision of inpatient hospital services.

Four of the above factors (market basket productivity, new technological and scientific advances, and long-term cost-effectiveness) are related to inputs and outputs in the production of hospital inpatient care. For purposes of this conceptual framework, we have defined another set of variables as *outcomes*. Quality and intensity of all factors (including the quality and intensity (skill level) of professional nursing services) is reflected in the four input/output factors. Outcomes are a result of the four input/output factors. Outcome factors include quality of health care, access to care, financial viability of the hospital industry, and Medicare Part A Trust Fund viability. The DRG rate percent increase factor should be set so that it provides incentives for favorable outcomes under the prospective payment system. HCFA is aware of the importance of these outcome variables. A management information system has been designed to monitor outcomes under the prospective payment system. Data generated by this monitoring system will be used to assist in improving the overall design of the prospective payment system, including the setting of the rate increase factors.

B. Analytical Framework

We have developed factors for productivity, new technology, scientific advances, and the elimination of ineffective practice patterns, which are necessary to insure the cost-effective delivery of care. Each of these factors interact with the others, to some extent, and have an impact on the quality of care. We have determined an aggregate percent increase value for each of these factors, making conservative assumptions and considering the potential effect on the quality of inputs and the attendant impact on quality of care as an outcome. We have combined these values into a proposed composite policy target adjustment factor.

This section attempts to translate the intent of the prospective payment system rate increase regulations into an algebraic accounting identity for the four input/output factors. As mentioned above, quality of hospital care is considered to be an outcome variable that results from the four input/output factors.

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* Prepared by Ross H. Arnett, III, Carolyn Cocotas, Mark Freeland, and George Kowalczyk, of HCFA's Divison of National Cost Estimates, Office of the Actuary, May 2, 1985.

Accounting Identity

A B C D

$$\text{o } \frac{\text{Cost}}{\text{Number of discharges}} \equiv \left(\frac{\text{Cost}}{\text{Real input}}\right) \left(\frac{\text{Real input}}{\text{Real output}}\right) \left(\frac{\text{Real output}}{\text{Number of discharges}}\right)$$

In Words

o Average cost per discharge ≡ (Average cost per unit of input) (Average relationship between inputs and outputs, that is, the inverse of productivity) (Average real output per discharge)

Term A is the average cost per discharge for a typical DRG.

Term B (cost/real input) is nominal cost divided by real input (inflation-adjusted input). The hospital market basket is used to adjust for input price inflation specific to the hospital industry. Term B is an expression of the hospital market basket index, that is,

$$\frac{\text{Cost}}{\text{real input}} = \text{market basket index}$$

or with algebraic manipulation

$$\frac{\text{cost}}{\text{market basket index}} = \text{real input.}$$

Alternatively, cost is the product of quantity of inputs times their respective factor prices. Thus, when cost is divided by the quantity of inputs, the result is price (the inputs cancel), or the HCFA market basket.

$$\text{Term C} \left(\frac{\text{real input}}{\text{real output}}\right)$$

expresses the average relationship between the quantity of input and the quantity of output and reflects productivity. The inverse of the standard productivity relationship (output per unit of input) is used because productivity is an offset factor; that is, positive productivity gains should be associated with reductions in the rate of increase in the DRG rate. The term *productivity* is used interchangeably with the term *efficiency*.

$$\text{Term D} \left(\frac{\text{real output}}{\text{number of discharges}}\right)$$

is inflation-adjusted output per discharge or output intensity per discharge.

In this framework, the intent of the regulation is interpreted as a need to classify hospital outputs per discharge into two categories: cost-effective outputs and cost-ineffective outputs. Cost-effective outputs per discharge are effective in two senses: (1) The outputs are appropriate to hospital inpatient settings, rather than some lower cost setting such as ambulatory care (for example, preadmission testing), skilled nursing home care, or home health care; and (2) There is a value for the money expended (in terms of enhanced health status compared to cost). Outputs per discharge associated with cost-effective new technologies and scientific advances are expected to add to the current base of cost-effective outputs per discharge. Thus, cost-effective outputs per discharge are an add-on factor.

Cost-ineffective outputs per discharge are ineffective in two senses: (1) the outputs are more appropriate to cost settings less expensive than inpatient hospital, and/or (2) there is not value for money expended (in terms of enhanced health status compared to cost.) Cost-ineffective outputs per discharge are an offset factor, since hospitals are reducing the use of ineffective outputs incorporated in base period practice patterns.

Thus, real output per discharge (Term D) in the accounting identity needs to be partitioned into two categories: effective and ineffective outputs per discharge.

$$\underbrace{\frac{\text{Cost}}{\text{Number of discharges}}}_{A} = \underbrace{\left(\frac{\text{Cost}}{\text{Real input}}\right)\left(\frac{\text{Real input}}{\text{Real output}}\right)}_{B\ C}\ \underbrace{\left[a\left(\frac{\text{Real output}}{\text{Number of discharges}}\right) + (1-a)\left(\frac{\text{Real output}}{\text{Number of discharges}}\right)\right]}_{D1\ \ D2}$$

The proportion of real output per discharge in the base DRG rate that is cost-effective (value for money expended) is reflected by the term "a." Likewise, the proportion of real output in the base DRG rate that is cost-ineffective is reflected by the term "(1-a)". Together, a + (1-a) totals 100 percent of real output per discharge.

It is important to understand the difference between the concepts of effectiveness and productivity (efficiency) and how they relate to prospective payment system incentives and the DRG percent increase factor.

Productivity measures output per unit of input and gets at the question, "Could the same output have been accomplished with fewer resources or with a different mix of resources?" [1] Effectiveness compares a hospital's objectives, such as improving health status, with its accomplishments and gets at the question, "Are we doing the right things?" [2] The elimination of selected diagnostic tests because their use does not improve health status and reductions in length of stay with no decrease in health status are two examples of changes in practice patterns to improve effectiveness.

There are four combinations of productivity and effectiveness:

TYPOLOGY FOR EFFICIENCY AND EFFECTIVENESS

	Cost effective outputs	Cost ineffective outputs
Efficiently produced outputs per discharge.	A—Cost-effective and efficient.	B—Cost-ineffective but efficient
Inefficiently produced outputs per discharge.	C—Cost-effective but inefficient.	D—Cost-ineffective and inefficient

Some outputs per discharge can be cost-ineffective (certain outputs per discharge are more appropriately provided in lower costs settings and/or there is not value for money expended) and produced inefficiently (excessive inputs per unit of output), as reflected in quadrant D of the typology. Quadrant C combines cost-effective outputs with inefficiency in production (that is, the right care is delivered inefficiently). In quadrant B, there is ineffectiveness, but the production is efficient (that is, less effective care is delivered, but efficiently). In quadrant A, outputs are cost-effective (appropriate to hospital inpatient setting and value for money expended), and the outputs are produced efficiently (low ratio of inputs to outputs).

A major objective of the prospective payment system is to provide incentives for hospitals to move a higher proportion of outputs per discharge from quadrants B, C, and D to quadrant A. Positive incentives are given by the add-on for effective new technology and science. Normative standards or policy goals are used to set the productivity and the cost-ineffective practice pattern offsets. When these shifts to efficient and effective care are made judiciously, it should result in enhanced quality of care while concurrently reducing the rate of increase in hospital costs.[3] Increasing productivity and eliminating cost-ineffective practice patterns allows hospitals to shift the mix of services provided to enhance quality of care and/or to increase profit margins. The latter improves hospital financial viability, improving access to and lowering the cost of capital.[4]

The framework for analyzing the DRG rate percent increase factor can be summarized as: Percent change in DRG rate = f(+MB, −P, +CEO, −CIO).

+MB = Market basket, a weighted average of the prices of inputs used to produce a *constant* quantity and quality of hospital care (holding all other factors constant). It is an add-on factor.

−P = Productivity (efficiency), measures output per unit of input. The question, "Could the same output have been accomplished with fewer resources or with a different mix of resources?" is answered by productivity measures. It is an offset factor.

+CEO = Cost effective outputs per discharge associated with new technologies and scientific advances. It is an add-on factor and is associated with enhanced quality of care.

−CIO = Cost ineffective outputs per discharge. This factor is an offset, since hospitals are expected to reduce the use of ineffective outputs.

Outcome variables such as quality of care, access to care, financial viability of hospital industry, and Medicare Part A Trust Fund viability are being monitored under the prospective payment management information system. One example of such monitoring is review by PROs, which are setting policy targets for reducing risk and improving quality of hospital care. In addition, distributional impacts by hospital type and geographical location are being monitored.

C. Cost-increasing Dynamics Under Retrospective Cost-based Medicare Reimbursement, FY 1967–83

Under cost-based reimbursement, Medicare costs per discharge rose substantially in excess of economy-wide inflation. This result could be expected from the incentives inherent in cost-based reimbursement.

The market basket rose faster than economy-wide prices and wages. There was not a strong incentive to be a prudent buyer of labor or other inputs. The higher the wages or prices paid by the hospital, the more Medicare paid the individual hospital. Also, the more expensive the skill-mix of employees, the more Medicare paid the hospital.

There were incentives for negative productivity or efficiency, since the more efficient the hospital, the less HCFA would reimburse.

Cost-based reimbursement did not have incentives to specifically encourage cost-effective outputs per discharge, nor did it have incentives to discharge cost-ineffective outputs per discharge. The incentive under cost-based reimbursement was to increase

[1] James Suver and Bruce R. Neumann, *Management for Health Care Organizations*, Oak Brook, Illinois: Hospital Financial Management Association, 1981. Also see, Marvin E. Mundel, *Improving Productivity and Effectiveness*, Englewood Cliffs, New Jersey: Prentice Hall, 1983.

[2] Ibid.

[3] Everett E. Adam, Jr., James C. Hershauer, and William A. Ruch, *Productivity and Quality: Measurement as a Basis for Improvement*, Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1981.

Avedis Donabedian, *The Definition of Quality and Approaches to its Assessment*, Ann Arbor, Michigan: Health Administration Press, 1980.

Steven P. Gray and Wilbert Steffy, *Hospital Cost Containment Through Productivity Management*, New York: Van Nostrand Reinhold Company, 1983.

John W. Williamson, *Assessing and Improving Health Care Outcomes: The Health Accounting Approach to Quality Assurance*, Cambridge, Massachusetts: Ballinger Publishing Company, 1978.

James W. Williamson, James I. Hudson, and Madeline M. Nevins, *Principles of Quality Assurance and Cost Containment in Health Care*, San Francisco: Jossey-Bass Publishers, 1982.

[4] Donald R. Cohodes and Brian Kinkead, *Hospital Capital Formation in the 1980's: Is There a Crisis?*, Baltimore: Johns Hopkins University Press, 1984.

all outputs per discharge, regardless of effectiveness—as long as no harm was done to the patient. Consequently, due to generous cost-based inpatient reimbursement, ineffective outputs are believed to have proliferated. Service outputs that could have been provided in other, more cost-effective settings were often provided in an inpatient setting. Outputs whose costs exceeded benefits in enhanced health status were also encouraged, since Medicare cost-based reimbursement formulas provided "open-ended spending. In this regard, the Medicare reimbursement system was similar to private health insurers.

D. Cost-decreasing Dynamics Under the Prospective Payment System

The prospective payment system tends to reverse the incentives of retrospective, cost-based reimbursement, but with a lag due to uncertainties and costs of adjustment. During the 3-year cumulative period of FY 1984–86, there should be a tendency to reduce the rate of increase of costs per discharge.

Under the prospective payment system, there is an incentive for hospitals to be prudent buyers of labor and nonlabor inputs. There is an incentive to pay labor at the "going" wage and to have an efficient skill-mix. Revenues not spent for labor costs can be used to purchase other goods and services which generate profits, increase competitive position, enhance quality of care, etc.

Hospitals are rewarded for productivity increases, since hospitals receive a fixed price per DRG. If a hospital is efficient and produces care at costs below the DRG rate, it retains resulting profits. Likewise, inefficiency is penalized, since costs above the DRG rate are not reimbursed. Productivity improvements during the FY 1984–86 period could be substantial, given that there were 17 years of negative incentives for productivity improvements during the FY 1967–83 period.

Under the prospective payment system, with fixed prices by DRG, there is an incentive to search out cost-effective outputs, that is, outputs whose value exceeds money expended, and the service output is appropriate for the hospital inpatient setting. Hospitals are likely to be more careful in adopting new cost-increasing technologies under the prospective payment system. Peer review and peer pressure, competition, threats of potential malpractice suits, and professional ethics will likely provide incentives to adopt new cost-increasing technologies when such technologies have a proven value in terms of increased health status compared to money expended. Thus, even with decreases in costs per discharge, hospitals have incentives to add certain new cost-increasing, health-enhancing technologies. This, of course, occurs by increasing productivity and by reducing cost-ineffective outputs. By reallocating inputs and outputs toward the more cost-effective practice patterns, cost per discharge can decrease in real terms, while quality of care can be potentially improved. When cost-ineffective outputs are eliminated, the inputs associated with these outputs must also be eliminated. Costs will not decline proportionately if the inputs are not eliminated, and negative productivity will result.

D. An Illustration of the Use of the Framework for the FY 1986 DRG Rate Percent Change [1]

Annual DRG increase factors	Percent changes	Brief rationale
1. Hospital Market Basket	+4.85	This is the percent increase forecast for FY 1986. It reflects a complete passthrough for hospital input price inflation. Because hospital industry wage rates are used in the market basket, shifts in occupational and skill mix are automatically included in the market basket.
2. Policy Target Adjustment Factors	−1.5	
a. Productivity (Efficiency) Offset.	−1.0	Valid productivity indexes are not currently available for the aggregate hospital industry. Various economy-wide productivity indexes developed by the Bureau of Labor Statistics indicate productivity increases of approximately 3 percent annually for the last 2 historical years (1983 and 1984). However, long-term average rates of increase show substantial variation depending upon the time period covered, the industries included, and the productivity measure used (multifactor productivity or labor productivity). Given the years of retrospective, cost-based reimbursement with attendant, negative incentives for productivity, a 1.0 percent productivity offset is conservative. It allows for most of productivity gains to accrue to the hospital industry.
b. Cost-effective Technologies Add-on.	+1.5	This is a target rate of increase that allows significant growth over time in cost-increasing, health-enhancing new technologies and scientific advances (as they affect operating expenses). This target rate of increase recognizes that long run historical intensity increases are not compatible with Medicare HI Trust Fund viability. By increasing productivity and eliminating ineffective practice patterns at rates higher than shown in this table, hospitals free up additional revenues. These revenues can be used to purchase additional technologies at a rate in excess of the 1.5 percent target rate of increase and/or to increase profit margins. Capital costs associated with new technologies continue to be reimbursed on a retrospective cost basis.
c. Ineffective Practice Patterns Offset.	−2.0	Ineffective practice patterns includes services which are more appropriately provided in lower cost settings and/or services that do not give value for money expended. Average length of stay for Medicare patients decreased 11.0 percent for hospitals in States with prospective payment in FY 1984. Physicians reduced outputs associated with this decline in average length presumably because they deemed that such outputs would not give value for the money expended and/or the outputs could more effectively be provided in a lower cost setting. If marginal cost is assumed to be 40 percent of average cost, then costs would be reduced 4.4 percent.
3. Composite increase	+3.35	

[1] The annual increase factors are added and subtracted to get the composite percent increase. The algebraic framework discussed earlier is multiplicative, rather than additive. The difference (due to interaction terms) is small. Since the additive framework is easier to understand for percent changes, it is suggested for use in this framework. The algebraic framework is presented in terms of costs per DRG, while this table shows percent changes for the various factors relative to the 1985 fiscal year DRG rate levels. The basic concepts inherent in the algebraic framework apply to this table of percent change factors.

E. Policy Target Adjustment Factors

Policy target adjustment factors include the effects of productivity, technology, and effectiveness on the DRG rate per discharge. They are termed policy target adjustment factors for two reasons: (1) they are extremely difficult, or perhaps impossible, to quantify individually with existing data sources, and (2) they are likely to be policy-determined variables reflecting targets, rather than historical experience.

Due to the extreme difficulty, or perhaps impossibility, of quantifying aggregate inputs and outputs in a conceptually meaningful way, we believe it is not currently possible to make precise empirical estimates for the individual factors of productivity, technology, and ineffective practice patterns. Existing studies sometimes report to have a measure or indicator for one of these three concepts, but inadvertently have some unknown mixture of all three. Interaction relationships inherent among the three factors suggest that individually setting target values for the three components is suggestive, at best, given current data limitations. Each individual hospital can best determine the mix of productivity increases, cost-effective technology add-ons, and ineffective practice pattern offsets to reach the desired target for the sum of the three factors. With this caveat in mind, we will now discuss the individual factors.

1. Productivity (Efficiency) Offset

Productivity improvements result in increases in output prices which are less than increases in the price of inputs (assuming constant profit margins and no change in the nature of outputs). In competitive industries, consumers benefit from increases in productivity by paying lower prices. Likewise, under the prospective payment system, increases in productivity should be reflected by lower DRG prices than would otherwise be the case. Sharing the cost savings from increased productivity provides desirable incentives for the prospective payment system.

While there does not appear to be a meaningful hospital industry-wide composite measure of hospital productivity, there have been numerous studies indicating that substantial gains can be made in hospital productivity.[5]

Process innovative technologies, which are associated with increased productivity and decreased operating cost, are included with the productivity offset factor—not with the technology add-on factor. Capital costs associated with the purchase of cost-decreasing technologies continue to be reimbursed on a retrospective cost basis. Decreased operating costs associated with the use of such cost-decreasing technologies can be used to finance quality-enhancing services.

2. Cost-Effective Technologies Add-on

Certain product innovative technologies and scientific advances (with accompanying labor and nonlabor inputs) are believed to increase the operating cost of treating illness, but result in a favorable ratio of benefits (improved health status) to operating costs. Such cost-effectiveness can be subjective and difficult (or, perhaps, impossible) to quantify in the aggregate.[6] It is the intent of the Federal regulations to include an add-on factor for such technologies and scientific advances. This cost-increasing, health-enhancing technology factor recognizes that, within bounds, HCFA should continue to provide positive incentives for technical and scientific excellence.

The impact of new technologies and scientific advances on operating cost and health status is very complex to isolate. Typically, a specific new technology increases operating costs in some uses and decreases operating costs in others. Concurrently, in some situations, health status is substantially improved, while in others it may have no affect or worsen health status. Separating out the relative importance of each of these effects for individual technologies and in the aggregate has proven to be illusive from a statistical point of view.[7] As mentioned previously, capital costs associated with the cost-effective technologies add-on currently covered by retrospective cost-based reimbursement.

3. Reduction of Ineffective Practice Patterns Offset

Some outputs per discharge are cost-ineffective in the sense that these outputs are more appropriately provided in lower cost settings and/or there is not value for monies expended.

Effectiveness compares a hospital's objective of improving health status with cost effective use of resources and gets at the question, "Are we doing the right things?" The elimination of selected diagnostic tests because their use does not improve health status and reductions in length of stay with no decrease in health status, are two examples of changes in practice patterns to improve cost effectiveness. Based on articles in the Summer 1984 *Health Affairs* journal, the experience under the prospective payment system, and other studies, retrospective, cost-based reimbursement encouraged the growth of ineffective practice patterns. Substantial savings can be achieved by reducing them.

For example, average length of stay for hospitals in States subject to the prospective payment system (that is, excluding hospitals in Maryland, Massachusetts, New Jersey, and New York which are paid under specially approved State systems) declined 11 percent in FY 1984.[8] Hospitals experience a reduction in costs associated with reductions in length of stay. For purposes of determining additional payments for day outlier cases, we have projected the marginal cost of an additional day of stay to be equal to 60 percent of the average per diem payment for the applicable DRG. (See § 412.82(c).) Assuming that this represents the ratio of marginal cost to average cost, the 11 percent reduction in length of stay would result in about a 6.6 percent reduction in cost per case. Of course, it can be argued that the marginal cost of an additional day of care may be significantly less than 60 percent of the average per diem cost. However, even if we assumed marginal costs to be only 40 percent of the average per diem cost, the FY 1984 reduction in length of stay would result in about a 4.4 percent reduction in cost per case. In addition to these considerations, we wish to point out that these probable reductions in costs do not reflect other changes in utilization of ancillary services, which have probably generated further reductions in the average cost per case under prospective payment.

4. Conclusion

We have set reasonable target rates of decrease or increase for each of the three factors (productivity, cost-effective outputs associated with new technologies and scientific advances, and cost-ineffective practice patterns). These target rates of change reflect a need to obtain a composite increase for the sum of three components that is reasonable and will provide incentives for desirable outcomes relating to quality of care, access to care, financial viability of hospital industry, and financial viability of Medicare Part A Trust Fund. The target rates of increase are intended to reflect judicious policy goals, rather than historical patterns.

The prospective payment system was intended to produce significant changes in the hospital industry. These forces of change need not conflict with each other. For example, productivity and cost-effectiveness need not compete with quality. Usually they are best pursued together. For example, practice patterns that minimize the potential for iatrogenic and nosocomial diseases

[5] See, for example, Stuart Altman and Joseph Eichenholz, "Control of Hospital Costs Under the Economic Stabilization Program," **Federal Register**, January 23, 1974, p. 2898; Applied Management Sciences, Inc., *Hospital Productivity—A Synopsis of the Literature*, Silver Spring, Maryland: Applied Management Sciences, DHHS Publication No. (HRA) 80-14028, August 1980; Applied Management Sciences, Inc., *Hospital Productivity—An Anotated Bibliography*, Silver Spring, Maryland: Applied Management Sciences, DHHS Publication No. (HRA) 80-14027, August 1980; Jerry Cromwell, "Productivity Trends in Short-Term General Non-teaching Hospitals," *Inquiry*, Vol. II, No. 3, September 1974, pp. 181–187; Paul L. Grimaldi and Julie A. Micheletti, *Prospective Payments: The Definitive Guide to Reimbursement*, Chicago, Illinois: Pluribus Press, Inc., 1985; David Sherman, "Hospital Efficiency Measurement and Evaluation: Empirical Test of a New Technique," *Medical Care*, October 1984, pp. 922–938.

[6] Kenneth E. Warner and Bryan R. Luce, *Cost-Benefit and Cost Effectiveness Analysis in Health Care: Principles, Practice, and Potential*, Ann Arbor, Michigan: Health Administration Press, 1982.

[7] Stuart Altman and Robert Blendon, Editors, *Medical Technology: The Culprit Behind Health Care Costs?* DHEW Publication No. (PHS) 79-3216, 1979; Office of Technology Assessment, *Diagnosis Related Groups (DRGs) and the Medicare Program: Implications for Medical Technology*, July 1983; Office of Technology Assessment, *Medical Technology and Costs of the Medicare Program*, July 1984.

[8] Bureau of Data Management and Strategy, "Short-Stay Hospital Admission Rates and Length of Stay Decreased Sharply in Fiscal Year 1984", *Health Care Spending Bulletin*, Health Care Financing Administration, No. 85-02, April 1985.

result in reduction of ineffective practice patterns, eliminate unnecessary costs, and directly contribute to improved health status. Also, under the prospective payment system, a hospital that improves productivity and reduces its costs per case has an opportunity for an improved margin of revenue over cost. This margin may be shared many ways, depending on the choice of the hospital, including expending a portion of it in ways that would improve quality.

As the concepts in our framework are modified to reflect improved understanding of the factors contributing to the DRG percent increase, and as relevant data become available, the DRG percent increase methodology will evolve to incorporate such changes.

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APPENDIX C

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

REPORT AND RECOMMENDATIONS TO THE SECRETARY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

APRIL 1, 1985

—ProPAC—

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* The Report Appendix is not reprinted in the Federal Register

Executive Summary

In 1983 Congress enacted the most far reaching changes in the Medicare program since its establishment in 1965. Left behind was a cost reimbursement system that by general agreement had produced unacceptable hospital cost inflation. Congress mandated that the inpatient hospital care rendered Medicare beneficiaries would henceforth be paid on the basis of a prospective payment per case, using diagnosis-related groups (DRGs) to classify and label the hospital product being purchased.

This report is the product of the congressionally-established Prospective Payment Assessment Commission, fifteen individuals knowledgeable about the health industry who were vested with the responsibility of analyzing the new prospective payment system (PPS) and advising the Secretary of the Department of Health and Human Services and the Congress on ways of improving it. The recommendations emanate from a profound concern that the fundamental changes introduced October 1, 1983 be implemented in as fair, cost-effective, and quality-enhancing a manner as possible.

The Commission, which began meeting in December 1983, has focused its attention on two major questions:

1. By what percentage should Medicare's payments for hospital discharges in fiscal year 1986 increase or decrease (the "Update Factor")?
2. What changes, if any, should be made concerning payments to hospitals for specific treatments or procedures by the Medicare program (adjustments of DRG classifications and weights)?

The body of this report and accompanying technical appendixes explain the Commission's actions and decisions in substantial and technical detail. For purposes of this summary, six major points should be emphasized:

- The Commission's unanimous recommendations reflect five major priorities: maintaining access to high-quality health care; encouraging hospital productivity and long-term cost-effectiveness; facilitating innovation and appropriate technological change; maintaining stability for providers, consumers, and other payers; and basing decisions upon reliable and timely data and information.

- The Commission recommends that next year's Medicare hospital payments incorporate inflation in hospital input prices and higher costs due to treating sicker patients, minus one percentage point. This recommendation would result in payment increases significantly less than those of recent years. The inflation minus one percentage point represents the Commission's best judgment as to the net change in payments needed to provide scientific and technological advances in the hospital industry, balanced by changes in hospital productivity and in the hospital product. In particular, the Commission's calculations reflect a judgment and belief that appropriate, sustained, and necessary technological growth in the health care industry can be achieved in part by savings generated through improvements in hospital productivity.

- The Commission recommends action on two problems arising from PPS implementation. Specifically, the Commission urges the Secretary of the Department of Health and Human Services to move quickly to improve the current definition of hospital labor market areas, in order to better adjust PPS rates for area wage differences. The Commission also urges the Secretary to institute adjustments for hospitals that incur higher Medicare costs per case associated with treating a greater proportion of low income patients ("disproportionate share hospitals").

- For fiscal year 1986, the Commission recommends adjusting all of the DRG weights using newer, more complete, and more accurate data. Such adjustment or "recalibration" is intended to enable PPS to reflect changes in hospital practice during recent years. As part of the recalibration process, the weights should also be adjusted to avoid building changes in coding practice into future PPS

payments. The Commission's recommendations incorporate its review of a number of specific medical practices and technologies. Additional data collection and analysis regarding other such practices and technologies are required in order to reach well-informed conclusions.

- While making no recommendation at this time on the pace of transition to national payment rates, the Commission is aware of concerns that have arisen regarding the impact of that transition on different hospitals and regions. The transition issue involves weighing the desirability of continued implementation of a system already clearly yielding positive results, against the possible harms of delaying that transition to correct PPS inequities and shortcomings. The Commission will continue to analyze this important issue.
- The Commission offers its analysis and recommendations in an environment of debate concerning future directions in health care delivery and financing. The recommendations themselves are predicated on continued implementation of the current PPS system. They seek to address as sensibly as possible the tension among several compelling and competing considerations: Federal budgetary constraints; maintenance of Medicare beneficiaries' access to high-quality care; and changes in the hospital industry. Should any health policy proposals affecting PPS be adopted, the Commission will respond with appropriate analytical work.

The report that follows is by design and necessity a technical document. The Commission issuing it, however, remains mindful of the fact that the report's analysis, discussion, and recommendations will directly affect millions of Medicare beneficiaries—individuals for whom the pluses and minuses of the "Update Factor" will translate into a significant impact on the kind of life-giving treatment they receive.

OVERVIEW OF THE COMMISSION'S RECOMMENDATIONS

The Commission's 21 recommendations fall into two major categories: recommendations regarding the update factor and recommendations regarding adjustments of DRG classifications and weights.

The first 16 recommendations address the update factor. In recommendation 1, the Commission proposes updating the standardized amount by the projected increase in the hospital market basket, minus one percentage point, plus an allowance for the estimated increase in real case-mix complexity during fiscal year 1985. Several of the first 16 recommendations involve specific market basket issues, including the desirable number of such market baskets, wage components, and correction of forecast errors.

Recommendations 13 through 15 address distributional concerns. The Commission selected the definition of hospital labor market areas and disproportionate share hospitals as two problem areas of PPS deserving immediate attention in the establishment of the fiscal year 1986 payment rates. This does not imply that other problem areas are not also of great importance, but the Commission believes that the distributional consequences of these two problems are sufficiently severe, and the potential for finding workable solutions is sufficiently high, that immediate attention is warranted.

Recommendation 17 recommends recalibration of the DRG weights with a data base that is newer, more complete, and more accurate than the 1981 data used to create the current DRG weights. The Commission's recommendation reflects its belief that, because of potential inaccuracies in the data originally used to establish the DRG weights and changes in hospital practice patterns since 1981, a full recalibration for the 1986 rates is advisable.

Recommendations 18 through 20 pertain to specific DRG weight, classification, and assignment issues concerning three procedures: pacemaker implantation; cataract extraction and intraocular

lens implantation; and percutaneous transluminal coronary angioplasty. Recommendation 21 concludes that two additional procedures, bone marrow transplantation and treatment of infective endocarditis, do not require in-depth analysis at this time.

The Commission will make future recommendations concerning these and many other DRG weight, classification, and assignment issues, as new information becomes available.

THE COMMISSION'S FUTURE AGENDA

While much has been accomplished during the Commission's first year, many important PPS-related issues require further evaluation. The Commission looks forward to analyzing a variety of complex matters including:

- The measurement of case mix used for PPS and evaluation of alternative case-mix systems.
- Improvement in the methods used to account for resources consumed during specific types of hospital stays. Special emphasis will be placed on analyzing the allocation of nursing costs to DRGs.
- PPS payment policies, with emphasis on adjustments for differing costs of hospitals serving large numbers of low income patients, definitions of hospital market areas, and effects of the transition to national payment rates.
- System responsiveness to changes in practice patterns, focusing on payment mechanisms for new or changing technologies. In addition, a number of specific diagnostic and therapeutic practices are currently being examined:
  - —Cyclosporine used in renal transplantation
  - —Magnetic resonance imaging
  - —Dual joint procedures in one hospitalization
  - —Treatment for alcohol dependence
  - —Cochlear implants
  - —Extracorporeal shock wave lithotripsy
  - —Dermatologic disorders
- The effects of PPS on health care delivery, such as changes in quality of care and health outcomes, changes in types of patients treated in hospitals, changes in the hospital product, and regional practice pattern variations.

STRUCTURE OF THE REPORT AND APPENDIXES

The Commission's report consists of two volumes. In this volume, the Commission's first chapter presents background information concerning establishment of the prospective payment system. Chapter 2 identifies the major priorities and approaches underlying the Commission's recommendations. The recommendations themselves, along with explanatory material, appear in Chapter 3. The fourth and final chapter of the first volume explores areas and issues requiring substantial Commission attention in the year and years to come.

In developing its recommendations the Commission considered staff analyses and the views of numerous technical experts. The purpose of volume 2—the Technical Appendixes—is to present much of this background material to afford greater insight into the Commission's decisions.

The appendixes consist of both descriptive and analytical pieces covering the origins of the prospective payment system, the determination of prospective payments, the update factor, and DRG recalibration. They underscore many of the dilemmas and issues confronting the Commission during its deliberations.

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LIST OF RECOMMENDATIONS

The Update Factor

Recommendation 1: Amount of the Update Factor

For fiscal year 1986, the standardized amounts should be updated by the projected increase in the hospital market basket, minus one percentage point, plus an allowance for the estimated increase in real case-mix complexity during fiscal year 1985. The negative one percentage point is a combined adjustment of a positive allowance for scientific and technological advancement and a negative allowance for productivity improvement and hospital product change.

This recommendation reflects the Commission's collective judgment of the appropriate increase in the level of payment per Medicare discharge under PPS, assuming that the Commission's other concerns regarding the market basket component of the update factor, the DRG weighting factors, and the distribution of payments across PPS hospitals are also addressed in the fiscal year 1986 payment rates. Further, this recommendation is based on the premise that no net reductions or increases in average per case payments to hospitals will be effected through measures other than the update factor, such as reducing the indirect teaching adjustment, incorporating capital payment under PPS at a budget-saving level, adjusting for coding changes occurring before fiscal year 1985, or any other changes in total payments per discharge under PPS.

The Hospital Market Basket

Recommendation 2: The Number of Market Baskets

For fiscal year 1986, a single market basket should be continued for those hospitals under PPS. The Commission will undertake a study to determine the appropriateness of developing market basket measures that reflect variation in economic factors across hospitals. The use of multiple market baskets by region and classes of hospitals within regions will be examined. If the analysis indicates that multiple market baskets are appropriate, the study will also include an assessment of the data required for implementation.

Recommendation 3: Market Basket for Psychiatric, Rehabilitation, and Long-Term Care Hospitals

Separate market basket weights should be used for the group of psychiatric, rehabilitation, and long-term care hospitals and related distinct-part units that are exempt from PPS, but subject to the TEFRA rate of increase limitation. Separate market basket weights need not be developed for children's hospitals.

Recommendation 4: Market Basket Wage Component—Occupational Groups

The wage component of the market basket should be split into three categories, each with separate weights: Managers and Administrators, Professionals and Technicians, and Other Hospital Workers. Changes in wages for these categories should be measured as follows:

- Managers and Administrators: the Employment Cost Index (ECI) for Managers and Administrators.
- Professionals and Technicians: a 50-50 blend of the Average Hourly Earnings (AHE) for the hospital industry and the ECI for Professionals and Technicians.
- Other Hospital Workers: a 50-50 blend of the AHE for the hospital industry and the ECI for all private industry.

Recommendation 5: Employment Cost Index Feasibility Study

For the long run, the Secretary should work with the Bureau of Labor Statistics to study the advantages and feasibility of developing an Employment Cost Index for the hospital industry that includes both public and private hospitals and covers increases in both wages and fringe benefits.

Recommendation 6: Study Effects of Changes in the Minimum Wage Law on Hospital Workers

The Commission plans to study the extent to which hospital workers would be affected by changes in the Federal minimum wage law. The intent of the study is to detect whether, under PPS, workers who earn more than the minimum

wage are differentially affected by statutory increases in the minimum wage compared with workers in other industries. If a differential effect is found to exist, the Commission will consider requesting the Secretary to take appropriate action.

Recommendation 7: Correction of Market Basket Forecast Errors

The update factor should include a correction for substantial errors made in the previous year's forecast of changes in the external price measures used in the hospital market basket. In the judgment of the Commission, substantial errors are those that equal or exceed 0.25 percentage points (or, when rounded in the published forecasts, 0.3 percentage points). The Commission will undertake a study to determine the extent to which differences between forecasted and actual increases in the internal price change measures are due to factors beyond the hospitals' control. Substantial errors determined after study to be due to factors beyond the hospitals' control should be corrected in the update factor.

Recommendation 8: Statutory Change for Forecast Error Correction

The Secretary has determined that she does not have the statutory authority to correct for market basket forecast errors. Therefore, the Secretary should seek statutory change to provide explicitly that the update factor include a correction for errors in forecasting the market basket beginning in fiscal year 1986.

Recommendation 9: Rebasing of Market Basket Weights

Market basket weights should be rebased at least every five years. Rebasing should be performed more frequently if significant changes in the weights occur. In addition, the market basket weights will need to be rebased if payment for capital or direct medical education is included in the PPS rates.

Discretionary Adjustment Factor

Recommendation 10: Allowance for Productivity and Scientific and Technological Advancement Goals

For the fiscal year 1986 payment rates, the allowance in the discretionary adjustment factor for scientific and technological advancement, productivity improvement, and hospital product change should be set at minus one percentage point.

Recommendation 11: Adjustment for Case-Mix Change

Prospective payments to individual hospitals and in the aggregate should reflect real changes in case mix. Changes in reported case mix that are unrelated to actual differences in the types of patients treated should not be built into future PPS payments.

Recommendation 12: Update Factor for Exempt Hospitals

In addition to the projected increase in the market basket, hospitals and hospital distinct-part units exempt from PPS should receive a minus one percentage point adjustment in their fiscal year 1986 update factor for productivity improvement and scientific and technological advancement.

Hospital Labor Market Areas—Area Wage Index

Recommendation 13: Improvement of Labor Market Area Definitions

In order to better reflect hospital labor markets, the Secretary should improve, as soon as possible, the current definition of a hospital labor market area used to adjust PPS rates for area wage differences, taking into account variations in wages paid in the inner city compared with suburban areas within a metropolitan area, and variations paid in different rural locations within a state. Implementation of this recommendation should not result in any change in aggregate payments.

Disproportionate Share Hospitals

Recommendation 14: Disproportionate Share Adjustment for Fiscal Year 1986

The Secretary should develop a methodology for adjusting PPS rates for disproportionate share hospitals and implement the adjustment in fiscal year 1986. The adjustment should be implemented so that it does not change aggregate payments.

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Recommendation 15: Definition of Disproportionate Share Hospitals

The Secretary should complete the development of a definition of disproportionate share hospitals in ample time to include adjustments for these hospitals in the fiscal year 1986 PPS payment rates. The Secretary should consider broader definitions of low income than simply the percentage of patients who are Medicaid recipients and should determine whether the share of Medicare Part A patients should be excluded from the definition.

Rebasing the Standardized Amounts

Recommendation 16: Rebasing the Standardized Amounts

The standardized amounts used to determine hospital payments under PPS should be recalculated using cost data that reflect hospital behavior under PPS. The results of such a recalculation, with appropriate modifications, could be used to rebase the standardized amounts. Although recent cost data are not available to recalculate the standardized amounts for the fiscal year 1986 payment rates, the Secretary should implement a process for timely collection of the cost data necessary for future recalculation. The Commission will later consider more specific recommendations regarding the timing, data sources, and process for rebasing the standardized amounts.

DRG Classifications and Relative Weighting Factors

Recommendation 17: Recalibrating the DRG Weights

For fiscal year 1986, all DRG weights should be recalibrated using the 1984 PATBILL data set. The newly recalibrated weights should be:

(1) Normalized so that the average case weight is the same as it was at the beginning of fiscal year 1985, thereby incorporating DRG weight adjustments made before the start of fiscal year 1985

(2) Adjusted for any demonstrable changes in reported case mix occurring during fiscal year 1985

Recommendation 18: Cardiac Pacemaker Implantation

The DRGs involving cardiac pacemakers, DRGs 115, 116, 117, and 118, should be recalibrated in the same manner as other DRGs to reflect changes in practice since 1981. The Commission will continue to analyze diagnosis and procedure coding and DRG classification related to pacemaker implantation and replacement; the distribution of costs and payments across discharges, hospitals, and DRGs; and the impact of PPS on the quality of patient care.

Recommendation 19: Cataract Extraction and Intraocular Lens Implantation

DRG 39, Lens Procedures, should be recalibrated in the same manner as other DRGs to reflect changes in practice since 1981, including the more frequent implantation of an intraocular lens following cataract removal. The Commission will continue to monitor resource use in this DRG to determine whether the types of patients treated as hospital inpatients change with increased outpatient surgery for cataract removal.

Recommendation 20: Percutaneous Transluminal Coronary Angioplasty

Cases in which Percutaneous Transluminal Coronary Angioplasty (PTCA) is the principal procedure should be removed from DRG 108 and temporarily assigned to DRG 112 before recalibration. The Secretary should immediately implement a mechanism to identify bills for cases in which PTCA is performed in order to provide data for analysis and additional adjustments as appropriate.

Recommendation 21: No Change Recommended for Bone Marrow Transplantation and Infective Endocarditis

The Commission has examined Bone Marrow Transplantation and Treatment for Infective Endocarditis and is recommending no changes in DRG classification or weights at this time, other than those that would occur with recalibration. Information will continue to be gathered and the subjects reconsidered at an appropriate time.

Chapter 1

Introduction and Background

The Medicare prospective payment system (PPS) for payment of inpatient hospital services was enacted by the Social Security Amendments of 1983 (Pub. L. 98-21). Accompanying this new payment system, the Congress created the Prospective Payment Assessment Commission (ProPAC) to advise the executive and legislative branches on maintaining and updating PPS.

This report contains the Prospective Payment Assessment Commission's recommendations to the Secretary of the Department of Health and Human Services (HHS) for updating and modifying Medicare's prospective payment system for inpatient hospital care. This chapter describes the Commission's role and responsibilities and summarizes historical trends in national health care expenditures that preceded the adoption of PPS. It also explains measures adopted to restrain the growth of Medicare hospital expenditures, including the development and operation of PPS. Chapter 2 states the priorities that guided the Commission in reaching its recommendations and that will be considered by the Commission in the future. The Commission's recommendations are presented in Chapter 3, and Chapter 4 specifies areas for further study and consideration.

THE PROSPECTIVE PAYMENT ASSESSMENT COMMISSION: ITS ROLE AND RESPONSIBILITIES

The prospective payment system significantly changed the Medicare program's method of payment for inpatient hospital care provided to Medicare beneficiaries. At the time of enactment, the Congress created a permanent, independent commission with responsibilities related to maintaining and updating this new system. The Prospective Payment Assessment Commission was established with 15 members appointed by the Director of the Office of Technology Assessment, Congress of the United States. Members are selected, as required by the law, to provide independent expertise and experience in health care delivery, financing, and research. (Biographies of current Commission members appear in this report's appendix.)

Commission Mandate

The Congress intends the Commission to be a highly knowledgeable, independent panel. The Commission's role is to advise the executive and legislative branches on PPS and to provide analysis necessary to maintain and update the system. This report fulfills the Commission's two primary responsibilities mandated by Pub. L. 98-21. These are to:

- Recommend annually to the Secretary of the Department of Health and Human Services the appropriate percentage change in the Medicare payments for inpatient hospital care, called the "update factor," which is applied to the previous year's payment rates.
- Consult with and recommend to the Secretary of the Department of Health and Human Services necessary changes in diagnosis-related groups (DRGs), including advice about establishing new DRGs, modifying existing DRGs, and changing the relative weights of the DRGs.

In addition, the Commission will report to the Congress its evaluation of adjustments made by the Secretary of the Department of Health and Human Services to DRG classifications and weights, as required by Pub. L. 98-21. The Secretary is required to make such adjustments at least every four years, beginning with fiscal year 1986.

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The Commission will prepare reports to the Congress appropriate and necessary to meet its mandate to update PPS and to analyze and evaluate adjustments to the system. Finally, the Commission will annually report to the Congress on the overall effects of PPS on the delivery and financing of the nation's health care and prepare other reports that the Congress may request. The Commission's review of inpatient hospital payments for pacemaker implantation, required by the Deficit Reduction Act of 1984, was transmitted to the Senate Finance Committee and the House Ways and Means Committtee on March 1, 1985 (see Technical Appendix D).

Commission Processes and Policies

The Commission has a policy of open meetings and solicits comment and involvement from groups or people with information relevant to its responsibilities. A notice describing the process for interested parties to submit information to the Commission has been published in the *Federal Register* (50 Fed. Reg. 1657 [1985]). The policies and procedures adopted by the Commission for conducting business in a manner consistent with the law appear in this report's appendix.

The Commission members were appointed in November 1983 and held their initial meeting in December 1983. Early in 1984, the Commission selected an Executive Director who began hiring staff, securing office space and supplies, establishing liaison with governmental and private sector organizations, and developing analytic systems to support the work of the Commission. Partial year funding of $1.5 million was appropriated for the Commission's work during the period covering fiscal year 1984. A full-funding request of $3.2 million (including unexpended carryover funds from fiscal year 1984) was appropriated by the Congress for ProPAC's first full year of operation, fiscal year 1985.

The Commission prepared this initial report while hospitals were in the early phases of payment under PPS. While the report contains specific recommendations for immediate consideration and implementation, the Commission views its role and responsibilities in a long-term context. The Commission's priorities and activities, as described in the remaining chapters, are intended to both correct technical deficiencies in the system and develop more fundamental improvements.

THE CHANGING HEALTH CARE ENVIRONMENT

The Commission undertakes its responsibilities at a time of significant change in the organization, delivery, and financing of health care services. Medicare's prospective payment system parallels private-sector efforts to increase efficiency in the delivery of health care. New financial incentives encourage providers to reduce costs by curtailing the provision of services with limited benefit and delivering services in lower-cost settings. At the same time, advances in technology have made it possible to shift services from hospitals to ambulatory settings and patients' homes.

Significant change in the delivery of health care services was motivated, in part, by rapidly growing health care expenditures during the last two decades. The increase in national health care spending followed the expansion of public and private health insurance coverage. In general, the policies of third-party payers emphasized inpatient hospital care and frequently reimbursed providers on the basis of their costs. Increased financial access to health care, especially hospital care, and greater use of services for large numbers of persons inevitably resulted in increased public and private spending. Further, cost-based reimbursement lacked incentives to provide care in the most efficient manner or balance the cost of additional care with expected improvements in health status.

National Health Care Expenditure Growth

National health care expenditures rose from $35.9 billion in 1965 to $355.4 billion in 1983. This tenfold rise in health care spending outpaced the

growth of the general economy. As a result, national health expenditures accounted for 10.8 percent of gross national product (GNP) in 1983, whereas in 1965, they accounted for only about 3.9 percent of GNP.

The increased spending between 1965 and 1983 can be attributed to three interacting factors:

- Increased input prices, the higher prices paid for the resources used to produce medical care services, account for about 62 percent of the increased spending.
- Greater use of services, for example more physician visits per capita, and greater intensity, such as additional diagnostic tests per hospital admission, together explain about 30 percent of the increase.
- Increased population accounts for about 8 percent of the increase.

Medicare expenditures rose from $7.1 billion in fiscal year 1970 to $65.0 billion in fiscal year 1984, reflecting overall health care spending growth. Outlays from the hospital insurance (HI) Trust Fund for inpatient hospital care increased from $4.2 billion in fiscal year 1970 to $39.7 billion in fiscal year 1984. In the same period, expenditures for supplemental medical insurance (SMI), which pays for physicians' services and other outpatient services, rose from $2.2 billion to $20.4 billion.

Responses to Increased Health Care Spending

Faced with unprecedented deficits in recent years, the Federal government has attempted to purchase services more prudently and has encouraged greater competition in the health sector. In addition to hospital prospective payment, Medicare expanded availability of coverage for care in risk-based competitive medical plans (CMPs) and health maintenance organizations (HMOs). New ambulatory surgery and hospice benefits were added and changes were made in payment policy for dialysis, clinical laboratories, and other services. Many states also have implemented changes, including adopting their own prospective payment systems and contracting with providers for services in their Medicaid programs.

In addition to governmental efforts, business and labor have become active participants in controlling health care costs. They often have cooperated in the redesign of health benefits, emphasizing ambulatory over inpatient care, effective hospital utilization review, preadmission certification of necessity, and surgical second-opinion programs. Many employers have increased employee cost-sharing and others have become cost-conscious health care buyers, often choosing to self-insure the risk of providing health benefits for employees.

Both the public and private sector have supported alternative delivery and financing arrangements. The portion of the population enrolled in HMOs rose from 3 to 6 percent between 1975 and 1984; enrollment increased by more than 20 percent between 1983 and 1984. The interest in alternative delivery systems also led to the development of new arrangements, such as preferred provider organizations (PPOs). Through PPOs, firms and business coalitions have negotiated discounts for health care provided to their employees.

In addition to changes in financial incentives, other significant changes will influence the direction of health care spending in the next decade. For example, the supply of active physicians has risen substantially during the 1970s and will continue to expand rapidly. By 1990, the nation's supply of active physicians will be one-third larger than it was in 1980. Increases in numbers of physicians have encouraged the development of new forms of health care financing and delivery, but the effect of the increased physician supply on total health care expenditures over the next decade is uncertain.

There are also subtle changes in public attitudes toward health maintenance and health care, with increasing numbers of people taking a more active role in maintaining and improving their state of health through "wellness" programs that include changes in life-style, such as increased physical exercise, reduced cigarette smoking, and modified diet. Faced with a growing amount of cost-sharing, consumers are also beginning to seek out

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less costly, more convenient, and often more personal alternative health care providers. The movement from the hospital to ambulatory settings for surgery and other services has been generally accepted. Nevertheless, the public places a priority on high-quality health care, including access to sophisticated diagnostic and treatment services usually available only in the hospital.

MEDICARE HOSPITAL REIMBURSEMENT AND THE DEVELOPMENT OF PROSPECTIVE PAYMENT

The adoption of the prospective payment system followed the recognition that retrospective, cost-based reimbursement did not sufficiently encourage efficiency and concern for costs. In the years preceding enactment of PPS, prospective limits were applied to routine inpatient hospital costs to restrain increasing Medicare outlays. In the year immediately prior to enactment of PPS, limits were extended to all inpatient operating costs. As an incentive for efficient delivery of health care, hospitals were rewarded if their costs were below these limits.

Reasonable Cost Reimbursement

The Congress balanced many political, structural, and policy interests in the enactment of Medicare in 1965. In the area of payment for inpatient hospital care, the choice was between paying hospital charges or the "reasonable costs" associated with care for beneficiaries. The Congress selected the latter approach because it was considered fair to hospitals and ensured access to hospital services for beneficiaries.

Extensive administrative regulations and operating instructions defined reasonable costs and detailed methods for determining them. These regulations and instructions changed many times over the years in an attempt to keep them current with hospital practices and to more accurately reflect reasonable costs. Cost determination was retrospective and used complex allocation formulas to separate the costs of Medicare beneficiaries' care from a hospital's total costs. Despite this complexity, however, the system responded to hospital cost increases simply by providing increased reimbursement—the greater a hospital's costs, the greater was its Medicare reimbursement.

Development of Prospective Reimbursement Approaches

As early as 1967, the Congress recognized that the retrospective, reasonable cost reimbursement system lacked incentives for hospitals to hold down costs. The Social Security Amendments of 1967 directed Medicare to experiment with different reimbursement methods and, in particular, called for "incentive reimbursement" studies. These studies had limited usefulness, however, because hospital participation was voluntary.

In the 1972 Social Security Act Amendments, the Congress enacted much broader experimental authority directing Medicare to proceed with prospective payment experiments and demonstrations. The amendments encouraged states to develop alternative hospital reimbursement methods by allowing Medicare to grant waivers that permitted Medicare's hospital reimbursement to be governed by a state's rate-setting program. In describing this new authority, congressional committee reports stressed the need for incentives in the system to moderate health expenditure growth.

The foundation for prospective hospital reimbursement was broadened by Section 223 of the Social Security Amendments of 1972, which authorized HHS to set prospective limits on costs. Under this authority, the Department set limits on routine per-diem hospital inpatient operating costs. At that time, the absence of good case-mix measures prevented applying limits to special care and ancillary costs. The Congress continued to move toward prospective payment for Medicare services in the 1978 End Stage Renal Disease Amendments which, for the first time, prospec-

tively set payment rates for a Medicare service, outpatient dialysis. The 1978-79 debate over hospital cost containment increased understanding of the problems of hospital payment and fostered a consensus that retrospective cost reimbursement should be replaced.

During this period, HHS began a comprehensive program of research, experimentation, analysis, and evaluation of prospective hospital reimbursement methods to support Medicare cost control measures. A key element in the research and experimental work was the recognition that any prospective system would require recognition of a hospital's case mix. Because different hospitals treat different kinds of patients and cases, a major equity issue was how to compensate hospitals adequately when the resources required differed for the care of patients with different conditions. The development of a technically acceptable case-mix measure was, therefore, a critical step in the development of approaches to prospective payment.

In the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), the Congress expanded the existing prospective cost limits from routine to total inpatient operating costs and required that these costs be adjusted by a case-mix measure. The use of total cost per-case limits was possible because a workable case-mix measure was developed in the late 1970s following work at Yale University in the development and refinement of diagnosis-related groups. Although the system remained retrospective and based on costs, it established additional cost-limitation incentives. Payment for inpatient hospital services was based on the relationship between a hospital's costs and a ceiling determined by a target rate of increase in operating costs per case. If a hospital incurred allowable costs per case below the target amount, it was paid its costs plus a certain percentage of the difference. If a hospital incurred allowable costs per case above the target amount, however, it was to have been paid the target amount plus, in 1983 and 1984 only, one-quarter of the excess cost.

The penalty and bonus concept embodied in TEFRA, designed to encourage hospital efficiency, represented a significant step toward the system of prospective payment eventually adopted. The Congress required the Department of Health and Human Services to develop a full prospective payment proposal for congressional consideration by the end of 1982. This deadline was met, and the resulting proposal, as modified by the Congress, became the current PPS.

MEDICARE'S PROSPECTIVE PAYMENT SYSTEM

Medicare's prospective payment system, enacted in April 1983, incorporated several objectives:

- Ease of understanding and simplicity of administration and implementation,
- Predictability of payment for hospitals and the Federal government,
- Establishment of the Federal government as a prudent purchaser of services,
- Reduction of administrative burdens on hospitals,
- Provision of rewards for efficient operation, and
- Limitation on beneficiary liability only to those coinsurance and deductible amounts previously mandated by the Congress.

Development of Diagnosis-Related Groups for Case-Mix Measurement

The DRGs used in PPS were developed at Yale University to measure case mix and were modified and refined over a period of more than 12 years. There were several constraints on developing the case-mix measure eventually used in PPS. The most important was the complete reliance on the limited information contained on the uniform hospital discharge data set (UHDDS).

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DRGs measure the output of a hospital by classifying patients into 23 groups, called major diagnostic categories (MDCs). These groups are based on the major human body systems. The 23 MDCs are further divided by other factors, including diagnostic or surgical procedure used and the patient's age, sex, and other clinical service information. This results in 467 individual DRGs. (One additional DRG, number 468, is used in PPS for payment purposes for cases in which the principal diagnosis and the principal surgical treatment procedure do not logically "match.")

Development of Payment Amounts

Following a congressionally mandated outline, the Health Care Financing Administration (HCFA) established initial payment levels for each DRG based on 1981 cost and charge data. The initial year rates, for fiscal year 1984, were updated for fiscal year 1985 in a final regulation published August 31, 1984. ProPAC is required to make recommendations for updating payment levels for fiscal year 1986 and beyond.

Although several additional factors affect the final payment amount, the prospective payment for each discharge can be generally described by the following formula:

Standardized Amount × DRG Weight = Payment Per Discharge

There are eight primary features of hospital payments:

1. There are 20 standardized amounts, one urban and one rural amount for each of the nine Census Divisions and for the U.S. as a whole. These standardized amounts are adjusted for area wages, outlier payments, and indirect medical education payments. The current standardized amounts and the DRG weights were constructed from 1981 hospital cost report data and from Medicare inpatient bill charge data.

2. Certain hospital costs continue to be reimbursed on a cost basis and, thus, were excluded from the costs that were used as the basis for the prospective payments. These excluded costs include:
   - Direct medical education costs,
   - Capital-related costs,
   - Kidney acquisition costs,
   - Services of nonphysician anesthetists (for fiscal years 1985-1987), and
   - Medicare bad debt.

3. Additional payments are made under certain circumstances for:
   - Indirect medical education,
   - Unusually costly or long-stay (outlier) cases, and
   - Hospitals serving a high proportion of dialysis patients (starting in fiscal year 1985).

4. Payment amounts are adjusted annually by an update factor composed of the market basket (the price of goods and services purchased by hospitals) and an additional "discretionary adjustment factor" (DAF). The DAF accounts for changes in hospital productivity, technological and scientific advances, quality of health care, and long-term cost-effectiveness of services provided. Originally, the Congress set the DAF at one percentage point. Subsequently, the Deficit Reduction Act of 1984 limited the DAF to .025 percent in fiscal year 1985 and not more than .025 percent in fiscal year 1986.

5. In fiscal years 1984 and 1985, there was a statutory constraint that payments under the prospective payment system must equal the payments that would have been made if prospective payment had not been enacted. This requirement is referred to as "budget neutrality."

6. The prospective payment system is to be phased in over three years. During the first year, three-quarters of the hospital's payment is based on its own cost experience. In the subsequent two years, this percentage falls to one-half, and then one-quarter. The "Federal standardized amount " is based on Census Division averages in fiscal year 1984 and a blend of Census Division and national payments in the next two years. Separate payment amounts are used for rural and urban hospitals. In the fourth year, the entire payment will be based on national urban or rural standardized amounts.

7. To determine the amount each hospital is paid, the regional and national standardized

amounts are adjusted by a wage index to reflect differences in hospital wage levels around the country. Each urban area has its own wage index, and all rural areas in a state use a single wage index.

8. The prospective payment law provides for a number of exemptions, exceptions, and adjustments for groups of hospitals. Exemptions are provided for children's hospitals, long-term care hospitals, rehabilitation hospitals and units, psychiatric hospitals and units, Federal hospitals, alcohol and drug abuse hospitals and units (for fiscal years 1984 and 1985), and hospitals in states with approved alternate hospital reimbursement systems. Exceptions and adjustments are provided for sole community hospitals, hospitals devoted primarily to cancer treatment and research, and rural referral centers.

Adjustments for Changes in Case Mix

As one of the adjustments used to satisfy the requirement of budget neutrality, the initial PPS standardized amounts were lowered to account for the increases in case-mix complexity which were expected to occur under PPS. The HCFA actuaries used data compiled by the Professional Standards Review Organizations (PSROs) across the nation to estimate this expected change. These data indicated that DRG weights would be 3.38 percent higher when more complete diagnosis and procedure information was submitted. As a result, the standardized amounts for the first year of PPS were lowered to reflect the expected increase.

Experience during the first year of PPS (fiscal year 1984) indicated that DRG weights had increased considerably more than the 3.38 percent predicted by the PSRO data. Under the requirement of budget neutrality, the PPS payments for fiscal year 1985 needed to be lowered to offset this increase by either again lowering the standardized amounts or lowering all the DRG weights. A decision was made to lower all DRG weights for fiscal year 1985 by 1.05 percent (described in Technical Appendix A).

Chapter 2

Overall Approaches and Priorities of the Commission

The Commission believes that the Medicare prospective payment system will have an impact on hospitals and the American health care system that extends beyond the impact on Medicare beneficiaries. Thus, the Commission's recommendations should be viewed in the context of a rapidly evolving health care system with PPS one significant part of the change.

In moving from cost-based reimbursement to the setting of a price in advance for the care of an individual patient, the prospective payment system significantly alters the incentives to hospitals. The Commission supports the incentives in PPS to increase hospital productivity and cost-effectiveness. The Commission also believes, however, that access to high-quality care must be maintained for Medicare patients.

Preliminary evidence suggests that hospitals are responding to PPS incentives, but it is too early to draw unequivocal conclusions regarding the overall positive or negative impact on the health care of Medicare beneficiaries. Nevertheless, the Commission is optimistic about the success of PPS and its recommendations are directed to improvements necessary to ensure continued success. Ongoing analysis and monitoring using more complete information is also necessary.

The following set of cross-cutting priorities has guided the Commission in the development of the recommendations in this first report. The Commission anticipates that in the future these priorities will continue to govern its recommendations concerning updating the payment rates and modification of the DRG classifications and weights.

MAINTAINING ACCESS TO HIGH-QUALITY HEALTH CARE

The maintenance of quality of care is a paramount concern of the Commission. The Commission is keenly aware that the financial incentives of the prospective payment system may lead hospitals to lower their costs of providing services in a variety of ways, some of which may potentially compromise the quality of care provided to Medicare beneficiaries. With its altered financial incentives for hospitals, the system creates the challenge of maintaining quality health care while restraining health care costs. Hospitals which are paid a fixed amount per type of case by Medicare and other payers (who adopt PPS or use other competitive strategies such as preferred provider organizations) can no longer be indifferent to the resources expended in patient care. PPS encourages a reduction of hospital inputs—tests, special procedures, supplies, equipment, personnel time, and hospital days—because hospitals can lower their costs only by controlling resources devoted to inpatient stays. Clearly, as the increase in hospital spending is slowed and cost savings are realized, the need to develop methods to detect adverse effects on quality and access is intensified.

The Commission strongly perceives its role as supporting the establishment of payment rates that will enable hospitals to continue to deliver high-quality health care. The DRG classifications and weights must be modified appropriately to reflect changes in medical practice. Similarly, the update factor must be adequate to enable hospitals to expend the resources required to maintain the appropriate amount and type of care.

The Commission believes that it would be unacceptable for quality to be assessed only in terms of maintaining past practices. Innovation and the adoption of new technologies shown to be safe

and effective must not be constrained inappropriately by PPS, for this would also constitute an erosion of quality. The Commission recognizes, however, that the resources that can be devoted to health care are finite and that changes in practice patterns must be carefully weighed against the costs of care.

The Commission will remain informed about the quality of care given under the prospective payment system. Recognizing that the Peer Review Organizations (PROs) have been given primary responsibility to monitor Medicare quality of care, the Commission will follow the PROs' progress in performing this crucial task. The Commission will also review and use the studies on quality of care being conducted by the Health Care Financing Administration, as well as studies by other government agencies and the private sector. Finally, the Commission will devote a portion of its own extramural and analytic resources to improving data bases and methods for measuring changes in quality of care and health outcomes. The Commission welcomes information from all sources dealing with the effect of PPS on quality of care.

ENCOURAGING HOSPITAL PRODUCTIVITY AND LONG-TERM COST-EFFECTIVENESS

The Commission's concern for maintaining quality under PPS is accompanied by a parallel concern for promoting productivity and long-term cost-effectiveness of the health care system. Increases in payments for hospital care can be limited while maintaining a high level of quality when productivity is improved. Productivity is improved when fewer or less costly resources are used to yield a product of given quality; the cost of the product is reduced by the cost of the resources no longer used.

PPS uses the DRGs to classify patients and define the hospital product. Hospital care is only one of many "products" which contribute to improvement in the health status of an individual. Self care, ambulatory care, and home health services are examples of other modes of care within the health care system that contribute to improved health. Thus, the Commission will be looking beyond the hospital setting in assessing and measuring productivity in the context of PPS. The policies of other payers, the effect of competing incentives, and the subsequent impact on productivity will also be considered in the Commission's analysis.

The Commission believes that cost-based reimbursement encouraged hospitals to use additional services, sometimes with inadequate consideration about whether the benefits were worth the costs. PPS provides incentives for improving productivity and cost-effectiveness of services. PPS also creates incentives to move services to other settings. If these services can be provided at lower cost and equal quality in other settings, such a move should be encouraged. Adjustments will need to be made in hospital payments to reflect the movement of services to alternative sites, however, to avoid paying for services twice—once in the hospital DRG payment and again in payment for outpatient services.

The Commission is aware that the emphasis on reducing costs may deter the adoption of new services which may initially increase costs, even though in the long-run they may improve patient care, productivity, and cost-effectiveness. The Commission will closely monitor the system and, if necessary, develop recommendations to encourage the adoption of such services.

FACILITATING INNOVATION AND APPROPRIATE TECHNOLOGICAL CHANGE

The Commission believes the Medicare prospective payment system should have an unbiased effect on technological advancement. PPS payment levels should not inhibit the development or diffusion of new technologies and practices, nor should payment levels result in their inappropriate adoption. Instead, technology and practices should be examined in light of both long- and short-term potential effects on quality and productivity.

In reviewing the potential effects of PPS on the adoption of new technologies and practices, the Commission must consider whether payment policies and amounts are sufficient to enable hospitals to adopt such services. Current PPS financial incentives encourage the adoption of cost-saving technologies. Adjustments may be necessary to encourage the adoption of more costly but quality-enhancing new technologies. The Commission also believes that adjustments may be necessary to encourage the adoption of technologies and practices that are more costly when examined in the context of a single hospital admission, but may be cost-effective when considered from a broader health care system perspective over a longer period of time.

The Commission has taken the first steps toward addressing these concerns by examining a series of options for adjustments to PPS that could help foster the appropriate adoption of new technologies. Continued analysis of these options is a high priority for the Commission. One approach is to adjust the current DRG classifications and weights to reflect changes in technology and practice patterns. In addition, the Commission has considered and will continue to explicitly consider scientific and technological advances as part of recommendations related to the update factor.

In addition, the Commission believes that the current capital pass-through may potentially distort PPS incentives by encouraging investment in capital-intensive technologies with inadequate regard to their true cost-effectiveness or alternative approaches for providing needed services. For this reason, the Commission believes that a decision should be made about payment for capital costs as soon as possible.

MAINTAINING STABILITY FOR PROVIDERS, CONSUMERS, AND OTHER PAYERS

The Commission believes that in a rapidly changing health care delivery and financing environment, its recommendations should provide as much predictability and stability as possible. The Commission has identified many problems during its deliberations, and these are described throughout this report. Equitable and workable solutions are much more difficult to identify. Moreover, as this report is submitted, a large proportion of hospitals have been paid under PPS for less than one year. Thus, the Commission is making only those recommendations it considers most important and amenable to well-informed decision-making.

The Commission's philosophy in decision-making has been to act where there is immediate need for change and to allow the new PPS to become fully mature and operational—and stable—before suggesting new approaches or significant alterations. Therefore, if several solutions were suggested for resolving a particular problem, the Commission has often chosen the direction least disruptive to the originally structured PPS—and

to the hospitals, consumers, and other payers affected by it. Similarly, if there is doubt about the need for or impact of a change, the Commission has chosen to leave the subject for future analysis and discussion, when more data, information, and experience will be available.

DECISION-MAKING BASED ON RELIABLE AND TIMELY DATA AND INFORMATION

The Commission believes that its major contribution to the maintenance and evolution of the maturing PPS is the development of recommendations grounded in quantitative data and analytic reasoning. The availability and use of accurate and timely data and information, analyzed and presented without bias as a basis for decision-making, is a critical priority of the Commission and its staff. Analytic information must, of course, be tempered with judgment and experience, but the Commission will continue to strive to fulfill a role in which its approach is always to inform itself with the best and most timely information available before making recommendations.

The Commission has examined the data systems and reviewed the information that formed the basis for development of standardized amounts, DRG weights, and adjustments in PPS. The Commission is aware of a number of deficiencies in this base. Many of these deficiencies are unavoidable during this initial stage of PPS; over time they must be corrected. The Commission will continue to place a high priority on examining existing data and, where appropriate, developing new data. The Commission believes its recommendations, as well as the future work and research agenda described in Chapter 4, clearly reflect an orientation toward decision-making which is based upon an analytic and quantitative approach, using the most timely and appropriate data available.

Chapter 3
Recommendations

The Commission's priorities and concerns described in Chapter 2 were evident throughout its first year and are reflected in the recommendations that follow. The recommendations are in two parts, following the Commission's statutory requirements: First are recommendations concerning the fiscal year 1986 "percentage change" or update factor which determines the overall change in the PPS standardized amounts, exclusive of any other adjustments. Second are recommendations concerning adjustments to the "classifications and weighting factors" which determine relative changes in DRG payments. Discussion of these two types of recommendations is followed by a statement on the context in which these recommendations are made.

The major part of Chapter 3 consists of the Commission's 21 recommendations, each followed by a brief discussion of the rationale underlying the Commission's decisions. Details on background information, statistical analyses, and alternative options are contained in the Technical Appendixes.

The Update Factor

The statute requires the Commission to "...take into account changes in the hospital market basket..., hospital productivity, technological and scientific advances, the quality of care provided in hospitals (including the quality and skill level of professional nursing required to maintain quality care), and long-term cost-effectiveness in the provision of inpatient hospital services," in making its recommendations on the annual update factor. The Commission is required to report its recommendations to the Secretary of Health and Human Services no later than April first of each year, and "...Taking into consideration the recommendations of the Commission, the Secretary shall determine ...the percentage change... which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality."

The Commission has considered both aggregate payment amounts and the distributional effects of payment decisions on beneficiaries and hospitals in the belief that these effects are as important to the maintenance of high-quality care and to the achievement of other system goals as the level of the update factor. The Commission is concerned that an update factor which may be adequate on the average may be inadequate for certain types of hospitals and the Medicare beneficiaries who depend on these hospitals. Thus, some of the Commission's recommendations address the distributional consequences of the update factor and others the determination of the level of the update factor.

The first recommendation reflects the Commission's overall judgment of the appropriate level of the update factor for fiscal year 1986. The Commission believes its responsibility under the statute is to be as specific as possible in making its recommendation on this factor. The recommendation would require estimates for the hospital market basket and for "real" case-mix change to be developed by the Secretary. The Commission is recommending a specific amount for the remaining components of the "discretionary adjustment factor" which, in addition to the market basket increase, would comprise the update factor.

The actual percentage change in the average payment per DRG for fiscal year 1986 may differ from the update factor. The update factor is applied to the standardized amounts, but the overall increase would also be affected by across-the-board adjustments to the DRG weights. The Commission proposes adjusting the DRG weights to remove the effects of any reported case-mix change that will have occurred during fiscal year 1985 so that changes in coding occurring this year would not be built into future PPS payments (Recommendation 17).

In Recommendations 2 through 9, the Commission proposes changes in the hospital market basket, the component of the update factor that re-

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flects inflation in the prices that hospitals pay for inputs. Inflation in prices of inputs, the goods and services that hospitals purchase and use in the provision of hospital care, is generally thought to be beyond the control of hospitals and therefore appropriate adjustments should be reflected in hospital payment amounts when such prices are predicted to increase from one year to the next. Detailed information pertaining to the market basket recommendations is in Technical Appendix B.

Recommendations 10 through 12 concern the discretionary adjustment factor, which is the portion of the update factor that reflects considerations other than the market basket of hospital input prices. The Commission decided that the DAF should be set to reflect goals for the attainment of productivity gains and for scientific and technological advancement. The Commission also identified a third consideration for the DAF, an allowance for "real" changes in the mix of Medicare inpatients (contrasted with changes that arise only from altered coding practices). The Commission selected a specific numerical adjustment for productivity and scientific and technological advancement in Recommendation 10 but proposes that the Secretary develop the allowance for real case-mix change in Recommendation 11. Recommendation 12 satisfies the Commission's statutory obligation to recommend an update factor for hospitals and distinct parts of hospitals excluded from PPS.

In concept, the discretionary adjustment to the update might be positive, zero, or negative depending on judgments regarding the relative importance of the components that comprise the DAF. The Commission's recommendations reflect its best collective judgment regarding a discretionary adjustment for fiscal year 1986. It should not be assumed that the Commission's recommendation in subsequent years will be for the same amount. Detailed information on the DAF is in Technical Appendix B.

Recommendations 13 through 15 address the distributional concerns expressed above. The Commission selected the definition of hospital labor market areas and disproportionate share hospitals as two problem areas of PPS deserving immediate attention in the establishment of the fiscal year 1986 payment rates. This does not imply that other problem areas are not also of great importance, but the Commission believes that the distributional consequences of these two problems are sufficiently severe, and the potential for finding workable solutions is sufficiently high, that immediate attention is warranted. Detailed information on these distributional issues is in Technical Appendix B.

Recommendation 16 pertains to the issue of rebasing the standardized amounts. The Commission goes on record in favor of rebasing, but recognizes that doing so for the fiscal year 1986 rates would be inadvisable due to the lack of suitable data. It is expected that rebasing concerns, including the identification of suitable data and methods of calculation, and the development of policy options for establishing new levels of the standardized amounts, will receive considerable attention from the Commission during the coming year.

Classifications and Weighting Factors

The Commission is required to "...consult with and make recommendations to the Secretary with respect to the need for adjustments [in classifications and weighting factors]...based on its evaluation of scientific evidence with respect to new practices, including the use of new technologies and treatment modalities." These adjustments refer to the system for "...classification of inpatient hospital discharges by diagnosis-related groups and a methodology for classifying specific hospital discharges within these groups," and to the assignment of "...an appropriate weighting factor [to each diagnosis-related group] which reflects the relative hospital resources used with respect to discharges classified within that group compared to discharges classified within other groups." The Secretary is required to "...adjust the classifications and weighting factors...for discharges in fiscal year 1986 and at least every four fiscal years thereafter, to reflect changes in treatment patterns, technology, and other factors which may change the relative use of hospital resources." The Congress has directed the Commission to make recommendations regarding the DRGs ". . . for such groups to reflect appropriate differences

in resource consumption in delivering safe, efficacious, and cost-effective care."

Recommendation 17 concerns recalibration of the DRG weights with a data base that is newer, more complete, and more accurate than the 1981 data on which the current DRG weights are based. The Commission's recommendation reflects its belief that, because of potential inaccuracies in the data originally used to establish the DRG weights and changes in hospital practice patterns since 1981, a full recalibration for the 1986 rates is advisable.

Two important features of the Commission's treatment of recalibration are, first, that it includes a recommendation for normalizing DRG weights so that the average weight of all PPS discharges is the same as it was at the beginning of fiscal year 1985 and, second, that it includes a recommendation to adjust DRG weights across the board for any change in reported case mix occurring during fiscal year 1985. The reduction in DRG weights implied by this adjustment would be offset, in part, by the positive allowance for real case-mix change described above as part of the recommended update factor.

This recommendation does not imply, nor should it be inferred, that the Commission will propose a recalibration or normalization next year or any specific subsequent year, nor does it suggest that the Commission will recommend the same type of data or approach for recalibration in the future. Further information on recalibration and related adjustments is in Technical Appendix C.

Recommendations 18 through 20 pertain to specific weighting, classification, and assignment issues concerning three procedures: pacemaker implantation, cataract extraction and intraocular lens implantation, and percutaneous transluminal coronary angioplasty. Two additional procedures, bone marrow transplantation and treatment of infective endocarditis, were determined not to require in-depth analysis at this time, as indicated in Recommendation 21. Detailed information concerning pacemaker implantation (Recommendation 18) is in Technical Appendix D; information pertaining to Recommendations 19 through 21 is in Technical Appendix C.

The Commission may make additional recommendations concerning these issues in the future, if new information becomes available. Furthermore, the majority of DRG weighting, classification, and assignment issues undertaken for review by the Commission in its first year require additional data and analysis. A summary of the issues currently under review is provided in Chapter 4. The Commission will supplement this report with additional recommendations as appropriate.

The Context for These Recommendations

The Commission firmly believes that adoption of these recommendations will result in substantial improvements in PPS and will maintain the essentially positive experience that implementation of PPS has achieved to date. Nevertheless, because these recommendations necessarily are made in a rapidly changing health care environment, both in Federal health policy and in the private health sector, the Commission is concerned that the context in which its decisions were made be recognized. Changes in this context may lead the Commission to reconsider some of its recommendations. Such changes will also influence the Commission's choices of issues to address in future reports.

The Commission's recommendations are made under the assumption that current law and its interpretation will remain in force during fiscal year 1986. The Commission decided early in its deliberations that it would not attempt to predict policy changes arising from actions of the Executive Branch or the Congress. Nevertheless, if important policy changes occur, the Commission may wish to reconsider some of its recommendations.

The Commission also recognizes that its recommendations are made at a time when hospitals are in either the first or second year of experience with PPS and only a fraction of their payments are based on Federal DRG payment rates. During its deliberations, the Commission has learned about several demonstrated and potential problems of PPS which, if not corrected, may result in unwarranted hardships for some hospitals and Medicare beneficiaries. The Commission has made specific recommendations con-

cerning two of these problem areas and has committed its resources to the study of several others.

The Commission believes that, as the transition to a fully implemented prospective payment system proceeds, serious problems must be identified and corrected. The Commission considered the possibility of specifically proposing a delay in the transition to allow additional time for problem solving but did not do so because it did not wish to interfere with the momentum of PPS. Nevertheless, the Commission has asked its staff to continue the analysis of the effects of the transition. If problems exacerbated by the transition are sufficiently severe and not correctable by other policy measures, a recommendation for delay in the transition will be considered. Further information on the transition issue is in Technical Appendix B.

Finally, the Commission does not wish to imply, nor should it be inferred, that issues not addressed in its 21 recomendations are unimportant. The Commission recognizes that there are many other important issues deserving serious attention and has already scheduled several of these issues for analysis in coming months. Chapter 4 presents a summary of these issues.

RECOMMENDATIONS REGARDING THE UPDATE FACTOR

Recommendation 1: Amount of the Update Factor

For fiscal year 1986, the standardized amounts should be updated by the projected increase in the hospital market basket, minus one percentage point, plus an allowance for the estimated increase in real case-mix complexity during fiscal year 1985. The negative one percentage point is a combined adjustment of a positive allowance for scientific and technological advancement and a negative allowance for productivity improvement and hospital product change.

This recommendation reflects the Commission's collective judgment of the appropriate increase in the level of payment per Medicare discharge under PPS, assuming that the Commission's other concerns regarding the market basket component of the update factor, the DRG weighting factors, and the distribution of payments across PPS hospitals are also addressed in the fiscal year 1986 payment rates. Further, this recommendation is based on the premise that no net reductions or increases in average per case payments to hospitals will be effected through measures other than the update factor, such as reducing the indirect teaching adjustment, incorporating capital payment under PPS at a budget-saving level, adjusting for coding changes occurring before fiscal year 1985, or any other change in total payments per discharge under PPS.

The rationale for this recommendation is provided in the discussions accompanying Recommendations 2 through 16. The Secretary should estimate the projected increase in the hospital market basket and the increase in real case-mix complexity using the most current data available at the time the payment rates are determined. These estimates, combined with the one percentage point net reduction for scientific and technological advancement, productivity improvement, and hospital product change, would determine the increase in average payments per discharge under PPS for fiscal year 1986.

The Hospital Market Basket

Recommendation 2: The Number of Market Baskets

For fiscal year 1986, a single market basket should be continued for those hospitals under PPS. The Commission will undertake a study to determine the appropriateness of developing market basket measures that reflect variation in economic factors across hospitals. The use of multiple market baskets by region and classes of hospitals within regions will be examined. If the analysis indicates that multiple market baskets are appropriate, the study will also include an assessment of the data required for implementation.

The effects of inflation on a hospital or group of hospitals can differ from those measured by a single national hospital market basket for a number of reasons. First, increases in the prices of some items—most notably wages—vary across

regions. Second, regional differences in price levels may affect the market basket weights, which represent the share of total hospital expenditures going to a component. Market basket weights may also differ if hospitals purchase different amounts of an input than the average (e.g., hospitals in colder climates may need to purchase more fuel). Finally, a single national market basket may not be an appropriate measure of inflation for hospitals that use a different mix of inputs than the average because they provide different services.

Since past analysis has shown that differences in hospital input price increases across regions and certain hospital types are not statistically significant, the Commission has decided not to recommend that separate market baskets be developed at this time. But because the analysis is limited, further study should be undertaken to evaluate the extent to which prospective payment rates might be affected if variation were allowed in market basket weights, or regional inflation rates. Examination of the possible overlap between the adjustment for area wage differences already included in PPS payments and the development of regional market baskets should be included. Future consideration of multiple market baskets will require a trade-off between the benefits of improvements in equity and the costs of increasing the complexity of the payment system.

Recommendation 3: Market Basket for Psychiatric, Rehabilitation, and Long-Term Care Hospitals

Separate market basket weights should be used for the group of psychiatric, rehabilitation, and long-term care hospitals and related distinct-part units that are exempt from PPS, but subject to the TEFRA rate of increase limitation. Separate market basket weights need not be developed for children's hospitals.

Due to the nature of the services they provide, the labor share of total expenses in psychiatric, rehabilitation, and long-term care hospitals is substantially higher than in other hospitals. To best reflect the effects of inflation, the market basket weights used to set the target rate of increase for these hospitals should take into account this differing use of inputs, and any others that may exist. Although children's hospitals are also exempt from PPS, the current market basket weights are more appropriate for this group, since the labor share of total expenses in these hospitals is very close to the overall average on which the current weights are based.

Recommendation 4: Market Basket Wage Component—Occupational Groups

The wage component of the market basket should be split into three categories, each with separate weights: Managers and Administrators, Professionals and Technicians, and Other Hospital Workers. Changes in wages for these categories should be measured as follows:

- **Managers and Administrators: the Employment Cost Index (ECI) for Managers and Administrators.**
- **Professionals and Technicians: a 50-50 blend of the Average Hourly Earnings (AHE) for the hospital industry and the ECI for Professionals and Technicians.**
- **Other Hospital Workers: a 50-50 blend of the AHE for the hospital industry and the ECI for all private industry.**

(The discussion for all three of the Commission's recommendations regarding the treatment of wages in the hospital market basket follows Recommendation 6.)

Recommendation 5: Employment Cost Index Feasibility Study

For the long run, the Secretary should work with the Bureau of Labor Statistics to study the advantages and feasibility of developing an Employment Cost Index for the hospital industry that includes both public and private hospitals and covers increases in both wages and fringe benefits.

Recommendation 6: Study Effects of Changes in the Minimum Wage Law on Hospital Workers.

The Commission plans to study the extent to which hospital workers would be affected by changes in the Federal minimum wage law. The intent of the study is to detect whether, under PPS, workers who earn more than the minimum wage are differentially affected by statutory increases in the minimum wage compared with

workers in other industries. If a differential effect is found to exist, the Commission will consider requesting the Secretary to take appropriate action.

Wages are the largest single component of the hospital market basket, accounting for nearly 60 percent of hospital expenses. Currently, HCFA measures changes in all hospital wages by the AHE in the hospital industry, a data series collected by the Bureau of Labor Statistics.

Recommendations 4 through 6 address two major problems with the current treatment of wages in the market basket. First, the AHE series does not separate changes in inflation from changes in the skill mix of workers in the hospital industry. As a result, some portion of the growth in the series over time has probably been due to shifts in the type and use of hospital employees (e.g., substitution of RNs for LPNs).

Creating separate wage categories by occupational groups as the Commission recommends would take account of broad changes in skill mix among managers, professionals, and other hospital workers. Weights for the recommended categories could be developed using 1980 Census data. In addition, differences in wage growth among these groups would also be addressed. In particular, a separate measure of wage change would be included for managers and administrators, who are excluded from the AHE series currently used.

The second major problem addressed by the recommendations is that use of a price change measure specific to the hospital industry allows hospital behavior—including the response to PPS incentives—to influence the increase in the market basket. Since the AHE series has risen in the past at a relatively high rate compared with other industries, there has been concern that exclusive use of a hospital industry series would allow hospitals to increase wages faster than other industries even when a differential was not warranted. More recently, however, growth in the AHE hospital series has slowed more rapidly relative to wages in other industries. If hospital wage growth is slowed in response to PPS incentives for cost containment, the market basket forecasts will reflect this, and hospital workers could be limited to wage increases lower than that of other workers.

Blending the AHE with the ECI, which includes workers outside the hospital industry, would mitigate these effects, yet still partially reflect any unique circumstances in the labor markets for hospital employees. To the extent that the hospital labor market is unique, exclusive use of the ECI or other broader industry measures might fail to adequately portray the economic forces beyond the control of hospitals.

For the long run, an ECI should be developed for the hospital industry. Although it would not be used to replace the ECI measures recommended above, a hospital industry ECI might be preferred to the AHE series since the ECI measures skill-mix differences and hourly wages directly. If developed, this series could be used to measure changes in hospital industry wages and may or may not be used in the market basket.

Recommendation 7: Correction of Market Basket Forecast Errors

The update factor should include a correction for substantial errors made in the previous year's forecast of changes in the external price measures used in the hospital market basket. In the judgment of the Commission, substantial errors are those that equal or exceed 0.25 percentage points (or, when rounded in the published forecasts, 0.3 percentage points). The Commission will undertake a study to determine the extent to which differences between forecasted and actual increases in the internal price change measures are due to factors beyond the hospitals' control. Substantial errors determined after study to be due to factors beyond the hospitals' control should be corrected in the update factor.

(The discussion for both the Commission's recommendations regarding correction of market basket forecast errors follows Recommendation 8.)

Recommendation 8: Statutory Change for Forecast Error Correction

The Secretary has determined that she does not have the statutory authority to correct for market basket forecast errors. Therefore, the Secretary should seek statutory change to provide explicitly that the update factor include a correction for errors in forecasting the market basket beginning in fiscal year 1986.

Regardless of the method of forecasting inflation in the hospital market basket, errors are bound to occur that might have substantial financial consequences for hospitals or the Federal government. A correction need not be made, however, when the forecast error is small, since both the Federal government and hospitals should be able to manage within a margin of error. The prospective nature of payment rates is not compromised when the correction is made by adjusting the increase in the following year's rates.

The recommendation, however, distinguishes between internal and external price change measures (or price proxies). External proxies are those that measure price changes that extend beyond the hospital industry. For example, inflation in food prices is measured in the hospital market basket by a combination of food components of the Consumer Price Index and the Producer Price Index. Changes in these measures are beyond the control of the hospital industry, and therefore differences between actual and forecasted changes in the price proxy can be attributed to forecast error alone. Alternatively, internal proxies are those that apply solely to the hospital industry (e.g., wages as measured by the AHE series for the hospital industry). In this case, behavior of the hospital industry affects the actual increase in the price proxy. If the difference between forecasted and actual increases in internal proxies were automatically adjusted, hospital incentives to limit price increases in those categories would be reduced. Until further study can distinguish between the effects of forecast error and hospital behavior, no correction should be made for the differences between forecasted and actual changes in internal price proxies.

The Secretary has interpreted the statute to prohibit an adjustment for correcting market basket forecast errors. Because of this, the statute should be clarified by the Congress to explicitly require correction of forecast errors in the update factor.

Recommendation 9: Rebasing of Market Basket Weights

Market basket weights should be rebased at least every five years. Rebasing should be performed more frequently if significant changes in the weights occur. In addition, the market basket weights will need to be rebased if payment for capital or direct medical education is included in the PPS rates.

The current HCFA staff plan to update market basket weights every five years seems reasonable, but more frequent rebasing might be necessary if hospitals change—perhaps in response to the PPS—the mix of inputs they use to provide services. In addition, if policy changes are made to include capital or direct medical education costs in the overall PPS rates, the market basket weights will need to be recalculated.

Discretionary Adjustment Factor

Recommendation 10: Allowance for Productivity and Scientific and Technological Advancement Goals

For the fiscal year 1986 payment rates, the allowance in the discretionary adjustment factor for scientific and technological advancement, productivity improvement, and hospital product change should be set at minus one percentage point.

The discretionary adjustment factor (DAF) is based on a policy decision regarding the rate at which the Medicare standardized amount should change beyond increases in the hospital market basket. For the fiscal year 1986, the Commission has included in the DAF three broad allowances: one for technological and scientific advances; one for productivity; and one for changes in the hospital product. An additional allowance for real case-mix change should also be added by the Secretary. In future years, the Commission may choose to expand the elements in the DAF to reflect other factors.

This recommendation addresses the quantitative allowance for productivity, product change, and technological and scientific advances. The fiscal year 1986 adjustment for real case-mix change is addressed in Recommendation 11 and its accompanying discussion.

The update factor should encourage hospitals to seek productivity gains while, at the same time, ensure that sufficient funds are available to finance the adoption of quality-enhancing technologies after balancing the medical benefits against the

costs of such technologies. Together, these allowances in the DAF constitute a judgment about how much of the desired growth in technology can be funded out of productivity gains or other resources already in the payment system.

In developing quantitative allowances for this portion of the DAF, the Commission was required to make implicit judgments for which there is little precedence. Moreover, the technical methods and data available upon which to base these judgments yield imprecise estimates.

The Commission's recommendation for the DAF reflects the following broad guidelines:

Adjustments	*Percentage Allowance*
Scientific And Technological Advances	+1.5 to +2.0
Hospital Productivity	−1.5 to −2.0
Changes In The Hospital Product	−1.0
Net Adjustment (Before Inclusion Of The Allowance For Real Case-Mix Change)	−1.0

By recommending a small negative aggregate allowance for these elements of the DAF in fiscal year 1986, the Commission does not imply that there should be no allowance for technological growth. Rather, it is reasonable to expect that, at least for one year, any requirements for new technology can be funded from potential gains in productivity and changes in the types of services produced in an inpatient setting. Moreover, the DAF allowance is not the only method to finance technology adoption. In particular, the capital costs associated with new technologies are currently reimbursed on a retrospective cost basis under PPS.

The adjustment for technology reflects the Commission's view that the hospital industry will not continue to experience the same rate of growth as in the past decade. Future expenditures should reflect a balance between long-term growth in the hospital industry and growth in the remainder of the economy.

In the hospital industry, productivity is difficult to measure due to problems in defining an appropriate output or product. In the simplest terms, the hospital product under PPS is a discharge, as classified and labeled by the DRG system. The Medicare PPS provides significant incentives to change the nature of this product, including incentives to shift services from an inpatient to an outpatient setting or to move patients out of the hospital more quickly. As a result, the output previously produced during an inpatient stay can be produced by using a mix of inpatient and outpatient services.

It is difficult to separate changes in the hospital product from changes in productivity. The potential for productivity gains was examined from a variety of perspectives. These included analyses of staffing patterns and changes in average length of stay as well as the development of a specific productivity target for the industry. Based on these analyses, the Commission adopted an overall productivity guideline between minus 1.5 and minus 2.0 percent.

Changes in the hospital product can result from a shift of services from inpatient to other care settings. This shift would reduce the cost to the hospital of DRG production without necessarily achieving any reduction in total costs. Under these circumstances, the Medicare program could be overpaying for services since the cost base for the DRG rates includes the costs of services that have subsequently been removed from the inpatient setting.

Quantitative evidence regarding changes in the hospital product is limited to changes in average length of stay. Changes in length of stay, however, reflect both changes in productivity and changes in the hospital product. The most recent data available from the American Hospital Association's Panel Survey indicate a 7.8 percent decline in length of stay for patients 65 years of age and older in the first nine months of 1984 compared with the same period in 1983. Although it cannot be assumed that all of this change is related to PPS, the declines in length of stay are consistent with the incentives established by the Federal cost containment initiatives under TEFRA and PPS.

While the shorter lengths of stay cannot be directly or immediately translated into a 7.8 percent reduction in costs, the Commission believes that for fiscal year 1986 such a decline would result in at least a 3.7 percent reduction in costs due to productivity gains and a 1 percent reduction due to changes in the hospital product. In order

to continue sharing gains from improved efficiency, approximately half of the productivity cost savings should be retained by the hospital industry. In addition to providing support for investment in new technology and services, these funds would be available to develop hospital programs to assist patients who may have difficulty gaining access to care, and to help displaced hospital employees locate other employment or vocational retraining.

The recommendation for the DAF is based on the assumption that the Commission's other recommendations in this report are implemented. Taken together, these recommendations are intended to ensure that the Medicare program continues to pay a reasonable price for inpatient hospital services. The Commission is concerned that, while an update factor significantly less than the historical amounts is adequate on the average, it may be inadequate for certain types of hospitals and the Medicare beneficiaries they serve. This concern is evidenced in the Commission's recommendations regarding disproportionate share hospitals and hospital labor market areas (Recommendations 13 through 15). Implementation of these recommendations will materially affect the maintenance of equity under increasingly constrained PPS expenditures.

Further, the Commission made this recommendation under the explicit assumption that no adjustments affecting the level of average PPS payments per case would be made other than those it recommended.

The Commission believes the recommended level of the DAF adequately meets the costs of treating Medicare patients. It is not appropriate or expected that hospitals use other sources of revenue to absorb the costs of treating Medicare patients (e.g., raising charges to other payers or using reserve funds). To expect other sources to fund Medicare patients is an inappropriate policy that eventually would compromise the access of Medicare beneficiaries to quality care.

Recommendation 11:
Adjustment for Case-Mix Change

Prospective payments to individual hospitals and in the aggregate should reflect real changes in case mix. Changes in reported case mix that are unrelated to actual differences in the types of patients treated should not be built into future PPS payments.

Over time, changes in the distribution of patients across DRGs would be expected to increase the average PPS discharge weight for two reasons. First, real changes in the types of Medicare admissions may occur due to shifts in patterns of service delivery, the aging of the population, or other factors. In particular, the mix of hospital inpatients across DRGs may become more complex as patients with less complicated diagnoses are more often treated on an ambulatory basis. For the same reason, the mix of patients within DRGs might also become more complex, although this would not be reflected in the average payment per discharge. Prospective payment should include compensation for these types of case-mix change, which are due to changes in patient characteristics.

Second, the average PPS discharge weight might increase as hospitals code a higher proportion of patients into more complex DRGs. This would be expected particularly in the initial years of PPS, since hospitals now have incentive to improve the completeness and accuracy of the diagnostic information reported on Medicare bills. This type of case-mix change should not be built into PPS payment amounts, because changes in coding practices do not reflect an increase in the resources required to treat patients.

Since PPS payments automatically reflect all changes in reported case mix as they occur, an adjustment is necessary periodically to pay only for real case-mix change. The adjustment should also include an allowance for the overall increasing complexity in the mix of patients within DRGs.

For fiscal year 1986, the Commission recommends that, through recalibration, normalization, and adjustment of the DRG weights as described in Recommendation 17, the effects of case-mix change occurring in fiscal year 1985 should be removed from the DRG weights so that changes in coding would not be built into future PPS payments. Along with this, an adjustment for case-mix change occurring during fiscal year 1985 estimated to be caused by real shifts in the mix of patients should be included in the update factor. If adopted, the combined effect of these recommendations would be to allow PPS per-discharge payments to rise as a result of increasing complexity in the Medicare cases hospitals treat, if such increases occur, but not as a result of past changes in coding.

In determining the adjustment for real case-mix change, the Secretary should analyze the most recent data available when the fiscal year 1986 payment rates are set. The Commission will review the findings of this analysis when they are available, and may recommend a specific adjustment at that time.

Recommendation 12:
Update Factor for Exempt Hospitals

In addition to the projected increase in the market basket, hospitals and hospital distinct-part units exempt from PPS should receive a minus one percentage point adjustment in their fiscal year 1986 update factor for productivity improvement and scientific and technological advancement.

In addition to a full allowance for inflation, the Commission has emphasized that the update factor should incorporate policy goals for productivity and scientific and technological advancement. These concepts are as difficult to quantify with precision for exempt hospitals and distinct part units as they are for hospitals included in PPS. Nevertheless, the Commission believes that the update factor for both sets of hospitals should include an adjustment for these elements.

The Commission recognizes that differences exist between PPS hospitals and exempt hospitals and units, as illustrated in the recommendation for different market basket weights related to different mixes of inputs. It is possible that these hospitals differ from PPS hospitals in other ways that would suggest differing allowances for productivity and scientific and technological advancement. Data are not currently available, however, to substantiate such differences.

Moreover, unlike PPS hospitals, exempt hospitals currently are not paid on a case-mix adjusted basis, and would not be subject to an adjustment for observed coding change in the recalibration process. Therefore, the Commission recommends that a minus one percentage point adjustment be adopted for exempt hospitals, with no additional adjustments for case-mix change. A separate update factor for exempt hospitals and units may be considered in the future.

Studies are being considered or conducted to gather and evaluate data specific to exempt hospitals to determine whether they can be phased into PPS, or if their specific products and processes cannot be fairly dealt with under PPS. Information from these studies will provide guidance upon which to base recommendations in future years regarding the appropriateness of a separate adjustment for different kinds of hospitals.

Hospital Labor Market Areas—Area Wage Index

Recommendation 13:
Improvement of Labor Market Area Definitions

In order to better reflect hospital labor markets, the Secretary should improve, as soon as possible, the current definition of a hospital labor market area used to adjust PPS rates for area wage differences, taking into account variations in wages paid in the inner city compared with suburban areas within a metropolitan area, and variations paid in different rural locations within a state. Implementation of this recommendation should not result in any change in aggregate payments.

The current wage index used to adjust payments for inter-area wage differences does not distinguish separate labor markets within Metropolitan Statistical Areas (MSAs). This inadequacy

raises serious equity concerns. Several studies have shown that there is substantial variation in the wages paid in inner city as compared with suburban areas within the same MSA. Similar concern has been expressed regarding rural areas within a state. If PPS payments are to adjust for actual variations in area wage levels, the differences in hospital labor markets need to be reflected in the application of the area wage index.

The greatest difficulty faced in implementing the Commission's recommendation will be drawing the boundaries delineating hospital labor market areas. This is in part a problem generic to defining any labor market. The appropriate boundary definition is highly dependent on how the wage index is to be used. For the purposes of PPS, the boundaries for a hospital labor market area should be drawn so that the impact of the behavior of any single hospital on the wage index used to adjust that hospital's payment would be negligible. In small MSAs, there may be too few hospitals to designate more refined market areas. Thus, while it might be desirable to develop separate core and ring designations for each MSA and more refined designations for rural areas within states, it may not be possible to do so in every area.

The Commission clearly recognizes that there are substantial difficulties in developing new area wage indexes based on revised market areas. Nevertheless, the Commission believes the payment inequities engendered by the current system are sufficiently severe to warrant immediate correction. HCFA has better data on hospital labor markets than ever before, and the Secretary plans to revise the index for fiscal year 1986. To ensure the stability and predictability of PPS rates for hospitals in the future, it would be highly desirable to revise the wage index only once during this period. Thus, the Commission urges the Secretary to implement this recommendation in conjunction with any other revisions planned for the area wage index.

Disproportionate Share Hospitals

Recommendation 14: Disproportionate Share Adjustment for Fiscal Year 1986

The Secretary should develop a methodology for adjusting PPS rates for disproportionate share hospitals and implement the adjustment in fiscal year 1986. The adjustment should be implemented so that it does not change aggregate payments.

The Congress has clearly stated its concern that specific adjustments should be made for hospitals incurring higher Medicare costs per case associated with treating a high proportion of low income or Medicare Part A patients if such costs are not already accounted for in the PPS methodology.

According to both the House Ways and Means Committee and the Senate Finance Committee Reports that accompanied the Social Security Amendments, the disproportionate share provision reflected congressional concern that "public and other hospitals that serve a large number of low income and Part A Medicare beneficiaries" may serve patients "more severely ill than average and that the DRG payment system may not adequately take into account such factors."

The Commission, having reviewed a number of studies, is convinced that hospitals serving a high volume of low income patients (as measured by a variety of definitions) do incur higher Medicare costs per case. For example, these studies (including those conducted by HCFA) indicate that there is a consistent and significant positive relationship between Medicaid volume and Medicare costs per case.

The precise reasons for these higher costs are unknown. Based on its studies, however, the Commission is also convinced that these higher costs per case are substantially due to factors beyond the control of these hospitals. Therefore,

the Commission believes that a specific adjustment for these hospitals should be made in the fiscal year 1986 payment rates.

Development of a specific adjustment will require a reasonable definition of "disproportionate share." (Definitional problems are discussed under Recommendation 15.)

To develop an appropriate adjustment, it will be necessary to separate the effects of serving a low income population from other factors already reflected in the current PPS rates. The indirect teaching adjustment, for example, may adequately compensate some hospitals for the additional costs of serving a disproportionate share of low income patients over and above the indirect costs of having interns and residents on the premises. If the indirect teaching adjustment were reduced on the grounds that the indirect costs of teaching are actually lower than the adjustment provides for, this would have the effect of undercompensating some teaching hospitals which serve a disproportionate share of low income patients.

Similarly, part—but not all—of the undercompensation of some disproportionate share hospitals is attributable to the current methodology used to define labor market areas. If this problem were ameliorated, as the Commission recommends in Recommendation 13, it would reduce but not eliminate the extent of this undercompensation. In addition, to the extent that disproportionate share hospitals incur higher costs related to a mix of patients more severely ill than average, improvements in case mix measurement may subsequently alter the disproportionate share adjustment necessary for these hospitals.

Because of these interactions, calculation of the disproportionate share adjustment should take into account the calculation of other adjustments in order to achieve the appropriate levels and distributions of payments to all hospitals.

The Commission recognizes that determining the magnitude of a disproportionate share adjustment will not be a simple task. It will require careful analysis of the interactions among hospital characteristics to ensure that hospitals are not over- or undercompensated by the mix of adjustments chosen. Given the work already conducted by HCFA on this issue, the Commission believes that a reasonable adjustment is feasible for incorporation in the fiscal year 1986 rates.

In the development of a disproportionate share adjustment, the Secretary should explore the feasibility of a graduated schedule of adjustments (with perhaps a minimum threshold, below which no adjustment would be made), rather than a single adjustment for hospitals that are above a single cutoff point. Such a schedule is likely to be far more equitable than a single adjustment which may provide windfall gains for those just above the cutoff point and unfair losses to those just below that point. California, for example, uses a graduated schedule as a part of its implementation of the Medicaid disproportionate share provision for its noncontracting hospitals.

Recommendation 15:
Definition of Disproportionate Share Hospitals

The Secretary should complete the development of a definition of disproportionate share hospitals in ample time to include adjustments for these hospitals in the fiscal year 1986 PPS payment rates. The Secretary should consider broader definitions of low income than simply the percentage of patients who are Medicaid recipients and should determine whether the share of Medicare Part A patients should be excluded from the definition.

No adjustment to PPS rates for disproportionate share hospitals can be specified and implemented until a reasonable definition of disproportionate share is developed. The Deficit Reduction Act of 1984 requires the Secretary to develop and publish a definition of a disproportionate share hospital and to provide Congress with a list of hospitals which meet this definition. As of late March 1985, the results of the Secretary's study had not been made public.

The Commission clearly recognizes the difficulty in defining disproportionate share hospitals. Problems arise in both the identification of a proxy measure for low income patients and in the relevance of including Medicare Part A patients in that definition.

The majority of studies to date indicate that the volume of Medicaid patients is positively associated with Medicare costs per case. Thus, Medicaid volume has been suggested as a reasonable proxy for low income. Medicaid eligibility criteria, however, vary considerably among the states and regions of the country. Consequently, the proportion of Medicaid patients may not be a consistent measure of low income patients. If the percent of Medicaid patients were used as a proxy measure of low income, then the Commission would urge that this measure be adjusted to reflect variations in state Medicaid eligibility requirements and variations in income levels across states.

The relevance of including Medicare patients in the definition of disproportionate share is questionable if the disproportionate share adjustment is to reflect higher Medicare costs per case associated with serving a given population. First, Medicare patients tend to be evenly distributed among types of hospitals. Second, almost all the studies to date have found no evidence that a higher proportion of Medicare patients contributes to higher costs per case when PPS variables are controlled. A recent American Hospital Association study, however, brings this conclusion into question.

According to this study, higher Medicare costs per case are associated with hospitals having a higher precentage of Medicare revenues or patient days. The findings for Medicare admissions, however, were inconsistent for the two years studied (1980 and 1981). In 1980, the study found that the greater the proportion of a hospital's admissions which were Medicare, the higher the Medicare costs per case. In 1981, a higher proportion of Medicare admissions was not found to be significantly associated with higher Medicare costs per case.

The Commission concludes that a number of key issues concerning the definition of disproportionate share hospital have not been settled. Therefore, the Commission urges the Secretary to perform the necessary analyses to resolve these issues as expeditiously as possible so that an equitable adjustment for disproportionate share hospitals can be developed.

Rebasing the Standardized Amounts

Recommendation 16:
Rebasing the Standardized Amounts

The standardized amounts used to determine hospital payments under PPS should be recalculated using cost data that reflect hospital behavior under PPS. The results of such a recalculation, with appropriate modifications, could be used to rebase the standardized amounts. Although recent cost data are not available to recalculate the standardized amounts for the fiscal year 1986 payment rates, the Secretary should implement a process for timely collection of the cost data necessary for future recalculation. The Commission will later consider more specific recommendations regarding the timing, data sources, and process for rebasing the standardized amounts.

Periodic rebasing of the PPS standardized amounts—that is, use of more recent data to recalculate the average cost per case that, after adjustment and updating, is multiplied by the DRG weight to determine payment for a Medicare discharge—would maintain a relationship between hospital costs and PPS payments that might be eroded by indefinite use of an update factor alone. Under rebasing, payment rates would automatically reflect changes in length of stay, shifts to outpatient services, and the number and types of ancillary services and technologies used to treat hospital inpatients. Taking these changes into account using an update factor alone would require estimating their effects with very limited information.

Rebasing the fiscal year 1986 standardized amounts is not recommended since the most recent cost data available (from fiscal year 1982) are only one year more recent than the data used to set the current rates. Therefore, these data would not yet reflect hospital response to the cost-reducing incentives present under PPS or even under the TEFRA reimbursement limits.

Rebasing requires making specific decisions regarding the data sources used, possible adjustments—including sharing of savings between pro-

viders and the program—and the frequency and timing of rebasing. The Commission will consider these issues in the future.

Data Used to Rebase the Standardized Amounts. Timing of at least the first rebasing of the standardized amounts would be affected by the availability of data. Currently, the standardized amounts are calculated based on data included in the 1981 Medicare cost reports. Because of the lag in submitting and reviewing the cost reports, data from settled cost reports from the first year of PPS will probably not be available until 1987. Rebasing might be possible before then (perhaps for the fiscal year 1987 payment rates) by using cost reports as submitted or final reports from a sample of hospitals. The extent to which using data from a representative sample of hospitals might be a long-run way to implement periodic rebasing, yet still reduce the burden of cost reporting on the hospital industry, should also be considered.

Possible Adjustment to the Rebasing Calculation. Rather than simply using the outcome of a recalculation of the standardized amounts, rebasing could involve recalculating the standardized amounts, and then applying an adjustment. In this way, the effects of rebasing on the payment rates—and ultimately on hospital revenue—could be limited and made more predictable. For example, the change in the standardized amounts resulting from rebasing could be limited to no more than 10 percent of the previous amount. The recalculated standardized amounts might be lower, reflecting hospital response to the cost-reducing incentives of PPS. On the other hand, the recalculated amounts might be higher, due to the restrictions of the budget neutrality provision in effect for the first two years of PPS or to stringent update factors after that.

Frequency and Timing of Rebasing. Rebasing could be done annually, on a predetermined multiyear cycle (such as every four years) or on an ad-hoc basis. Annual rebasing would keep the relationship between payment rates and hospital costs as current as possible. It might be, however, that system changes would not occur rapidly enough to require annual repetition of the rebasing process. A carefully developed update factor might successfully predict trends in the hospital product and productivity, with rebasing necessary only over a longer period or when more dramatic changes occur. In addition, an argument often made against annual rebasing is that hospitals should share in productivity gains for some period before the gains are reduced by lower prices. Economic theory predicts that, even in a competitive market, there is lag time between the achievement of productivity gains and the market's automatic downward adjustment in prices. On the other hand, if costs were rising faster than payment amounts, more frequent rebasing would finance the increases with a short lag.

Short-run decisions about the frequency of rebasing could be made differently than long-run decisions. It may be reasonable to assume, for example, that the greatest changes in hospital behavior will occur in the initial years of PPS and that rebasing should be done more frequently in the early years than over the longer run.

Along with frequency, the timing of rebasing is also an issue to be considered. One choice would be to rebase the standardized amounts whenever the DRG weights are recalculated. In this way, the whole system would be adjusted at once. Alternatively, rebasing might be done on a different schedule than recalibration so that system changes occur more gradually. In addition, rebasing would be appropriate when other changes, such as the addition of capital to the PPS rates, are made in the system.

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RECOMMENDATIONS REGARDING DRG CLASSIFICATIONS AND RELATIVE WEIGHTING FACTORS

Recommendation 17:
Recalibrating the DRG Weights

For fiscal year 1986, all DRG weights should be recalibrated using the 1984 PATBILL data set. The newly recalibrated weights should be:

(1) Normalized so that the average case weight is the same as it was at the beginning of fiscal year 1985, thereby incorporating DRG weight adjustments made before the start of fiscal year 1985

(2) Adjusted for any demonstrable changes in reported case mix occurring during fiscal year 1985

Recalibration of the DRG weights is one way to adjust PPS payments periodically to reflect changes in hospital technologies and practice patterns that alter the relative resources used across DRGs to treat Medicare patients. Recalibration, which adjusts *all* DRG weights, should be contrasted with reweighting, which adjusts only certain DRG weights.

The original approach used to create the DRG weights (i.e., combining charge data from Medicare patient bills with cost information from the hospital's Medicare Cost Report) would probably be preferred for recalibration this year as well, were it not for data lags. The most recent complete data base available for a 1986 recalibration using this methodology is the 1982 MEDPAR file of patient bill records and cost report data for the 1982 hospital accounting year—the year before TEFRA was implemented. These data are only one year more recent than the 1981 data used to establish the current weights, and would not reflect hospital response to cost-control incentives under PPS or even under TEFRA.

Rather than continuing to use older cost data or delaying recalibration until more recent cost data are available, the Commission recommends that recalibration be carried out for fiscal year 1986 using charge data from the Medicare PATBILL file for fiscal year 1984. This recommendation does not imply, nor should it be inferred, that the Commission will continue to recommend recalibration with charge data alone in the future.

DRG weights based on PATBILL data would offer two important advantages over the current DRG weights. First, the PATBILL file contains the most recent data available, including discharges for the first year of PPS. Second, the PATBILL file includes much more detailed diagnostic information than the 1981 MEDPAR file.

A possible disadvantage of using the PATBILL file alone is that it contains data on hospital charges, but not costs. Costs are generally thought to be more reflective of real resource use than charges, since charges can be distorted by hospitals' patterns of subsidization and revenue generation.

The Commission's analysis of the 1981 MEDPAR and Medicare Cost Report data indicates, however, that there is very little difference between weights constructed using the original methodology and weights constructed using charge data alone. Of the 358 DRGs for which weights can be constructed using Medicare data alone, 327 DRGs (representing about 96 percent of discharges) have a weight difference of only between zero and 5 percent.

The Commission also recommends that, after the DRG weights are recalibrated, the new weights should be normalized so that the average weight of all PPS discharges is the same as it was at the be-

ginning of fiscal year 1985. By normalizing in this way, the recalibration would affect only the distribution of payments across DRGs. It would not affect the overall average payment per discharge. A further adjustment to the weights should also be made for any demonstrable change in the average weight of a PPS discharge during fiscal year 1985. Such changes in reported case-mix could be estimated using the most recent fiscal year 1985 patient billing data available when the payment rates are set. If these steps are not taken, the average discharge weight—and therefore the average PPS payment—would change, in part due to shifts in the types of patients treated, and in part due to improvements in hospitals' diagnostic coding.

Adjusting to remove the effects of coding change during fiscal year 1985 from the DRG weights would not take away additional payments already received by hospitals, but it would prevent these coding changes from being built into future PPS payments.

Along with normalizing and adjusting the DRG weights, the Commission recommends that an adjustment reflecting shifts in the types of patients treated be included as part of the update factor for fiscal year 1986 (Recommendations 1 and 11). If these recommendations were adopted, payments would be allowed to rise as a result of increasing complexity in the Medicare cases hospitals treat, if such increases occur, but not as a result of past changes in coding.

The recommendation to recalibrate using charge data alone and to normalize and adjust the DRG weights is made specifically for fiscal year 1986. Concern has been raised that since hospitals have complete control over charges, they may be able to manipulate future charge-based recalibrations. Control of the DRG weights through charge-setting practices would be particularly possible for those DRGs common to only a few hospitals. This issue is not a concern for fiscal year 1986, since the 1984 charge data are already collected, but will be considered by the Commission in future recalibration decisions.

In upcoming reports, the Commission will address the frequency and timing of future recalibrations. This will be done as part of an analysis of long-run options for the development of a PPS data base and the timing of a number of system changes, including rebasing of the standardized amounts, overall reconstruction of the DRGs, and reweighting of individual DRGs as well as recalibration.

Recommendation 18:
Cardiac Pacemaker Implantation

The DRGs involving cardiac pacemakers, DRGs 115, 116, 117, and 118, should be recalibrated in the same manner as other DRGs to reflect changes in practice since 1981. The Commission will continue to analyze diagnosis and procedure coding and DRG classification related to pacemaker implantation and replacement; the distribution of costs and payments across discharges, hospitals, and DRGs; and the impact of PPS on the quality of patient care.

The Commission reviewed the appropriateness of Medicare hospital payments for pacemaker implantation. Problems in the 1981 MEDPAR and Cost Report files were identified that could have affected the weights for the pacemaker DRGs. With currently available data, however, it was impossible to estimate the magnitude and direction of these errors. Furthermore, many of the problems identified are not unique to pacemaker implantation and are likely to be corrected with changing hospital incentives under prospective payment.

Several methodologies were used to compare costs in the pacemaker DRGs with payments under PPS. On average, current payments appear to be as appropriate as for other DRGs. Recalibration of all the DRGs will adjust the pacemaker DRGs to reflect changing patterns of resource use related to advances in pacemaker technology (see Recommendation 17).

Several other issues concerning Medicare payments for pacemaker implantation require further evaluation in the future. There is a lack of specificity in the diagnosis and procedure coding for pacemaker recipients and in the grouping of the discharges into DRGs. The pacemaker DRGs have very high medical supply costs, which appear to be similar across all hospitals. However, since PPS adjusts payments to reflect average cost differences among hospitals related to differences in

location, area wage levels, and medical education, payment differences across institutions in the pacemaker DRGs may not correspond closely to cost differences. In addition, the financial incentives of PPS may lead some institutions to limit certain pacemaker-related services. If this occurs, quality of patient care could be adversely affected. Furthermore, hospitals may make decisions that lower the cost of care at the time of implantation but result in higher net costs for Medicare in the long-term care of the patient. The Commission plans to continue its analyses of these issues in the future.

Recommendation 19: Cataract Extraction and Intraocular Lens Implantation

DRG 39, Lens Procedures, should be recalibrated in the same manner as other DRGs to reflect changes in practice since 1981, including the more frequent implantation of an intraocular lens following cataract removal. The Commission will continue to monitor resource use in this DRG to determine whether the types of patients treated as hospital inpatients change with increased outpatient surgery for cataract removal.

Changes in practice patterns since 1981 were examined in cases assigned to DRG 39 because of the significant increase in the implantation of an intraocular lens (IOLs) following the removal of a cataract. Cataract extraction and/or IOL implantation represented 98 percent of the DRG 39 cases in the 1981 data used to construct DRG weights, but the data are insufficient to determine the percentage of these cases receiving intraocular lenses after removal of cataracts.

Other data indicate that the frequency of IOL implantation following cataract extraction has increased substantially. A national sample of hospital discharges indicated 58 percent of cataract extractions in patients 65 and over were accompanied by implantation of an IOL in 1981. This frequency increased to 85 percent in 1983.

Other changes in practice since 1981 that may have affected resource use for patients in DRG 39 are the increased use of posterior chamber lenses, sodium hyaluronate (Healon, a product used during surgery), and extracapsular rather than intracapsular surgery. Also, the length of hospital stays in DRG 39 decreased.

Since all of these practice changes are likely to be reflected in the hospital charges, the Commission recommends that the adjustments to the weight of DRG 39 be made in the process of overall recalibration (see Recommendation 17).

The Commission notes that future changes in practice resulting from the shift in cataract cases to outpatient settings may affect the type of patients treated as hospital inpatients. The Commission will monitor for evidence of this potential change.

Recommendation 20: Percutaneous Transluminal Coronary Angioplasty

Cases in which Percutaneous Transluminal Coronary Angioplasty (PTCA) is the principal procedure should be removed from DRG 108 and temporarily assigned to DRG 112 before recalibration. The Secretary should immediately implement a mechanism to identify bills for cases in which PTCA is performed in order to provide data for analysis and additional adjustments as appropriate.

PTCA is a new procedure that was not covered for Medicare beneficiaries when DRGs were created or when DRG weights were calculated. PTCA does not have a unique ICD-9-CM procedure code, so that cases in which PTCA was performed cannot be separated from cases involving other procedures given the same code. The procedure code used for PTCA is also used for removal of coronary artery obstruction by thoracotomy. As a result of this deficiency in procedure coding, cases in which PTCA is the principal procedure are assigned to DRG 108. This DRG, created for major surgical procedures that usually require significantly greater resources than PTCA, has a weight of 4.3756. Bills for inpatient hospital discharges during fiscal year 1984 show that PPS payments (excluding cost pass-throughs and indirect medical education payments) for DRG 108 were 155.5 percent of total charges for the services even though comparable PPS pay-

ments for all DRGs averaged 71.4 percent of total charges.

Reassignment of cases to alternative DRGs in the absence of complete information should be done only when available evidence indicates good cause for such action. The Commission considered leaving PTCA in DRG 108 until coding deficiencies could be corrected and cases could be identified for analysis of the resources consumed or moving it temporarily to a DRG that is more appropriate but reasonably clinically meaningful. DRG 112, Vascular Procedures except Major Reconstruction, with a weight of 2.3500 was selected based on the limited indirect evidence available concerning the costs of PTCA. This shift in the DRG assignment should be done before the recalibration for the fiscal year 1986 payments, so that the new weights for DRG 108 and DRG 112 will reflect the revised assignment.

The Commission is aware that PTCA is an alternative to coronary artery bypass graft surgery and that, in certain cases, PTCA is a cost-effective and preferred method of treatment. The recommendation to reassign PTCA from DRG 108 to DRG 112 is based on the Commission's analysis indicating that the original assignment was erroneous due to the deficiencies in procedure coding noted above. The temporary assignment of PTCA cases to DRG 112 results in more appropriate payment for the service, while maintaining the incentive to use this procedure when it is indicated for an individual patient. Further, reassigning PTCA will remove financial incentives that may have existed to perform PTCA when an alternative therapy, either medical or surgical, was preferable.

The Commission chose to recommend reassigning PTCA to a lower-weighted DRG because the original assignment was clearly erroneous. The Commission believes it is inappropriate to allow incorrectly categorized technologies to subsidize other types of cases or to allow other cases to subsidize incorrectly categorized technologies. The Commission also will not hesitate to recommend changes that increase payment for an incorrectly categorized technologies when they are identified.

The Secretary should immediately implement a mechanism to identify PTCA, such as manual review of cases in which procedure code 36.0 is used. Once a sufficient number of PTCA cases have been identified, these data can be used to evaluate the resources consumed and to make additional adjustments as indicated.

Recommendation 21: No Change Recommended for Bone Marrow Transplantation and Infective Endocarditis

The Commission has examined Bone Marrow Transplantation and Treatment for Infective Endocarditis and is recommending no changes in DRG classification or weights at this time, other than those that would occur with recalibration. Information will continue to be gathered and the subjects reconsidered at an appropriate time.

Bone Marrow Transplantation is an established treatment for certain conditions. Experience with this technology is limited and it is currently available in only a few centers in the U.S. Although patients over 65 years of age are not considered candidates for this procedure, Medicare patients eligible due to disability may be potential recipients. No specific procedure code exists for bone marrow transplantation. The procedure would currently be classified on the basis of patient diagnosis into DRGs where conventional treatment may require very different use of hospital resources. The Commission recommends that no action be taken on this issue at this time although it will be reevaluated as it becomes more widely adopted.

Infective Endocarditis was examined because of questions concerning the appropriateness of the reported geometric mean length of stay for DRG 126 and the generally recommended length of stay for treatment of this condition. When the differences between geometric and arithmetic averaging are considered, the geometric mean lengths of stay do not appear to be inappropriate for this DRG. For this reason, as well as the relatively small number of Medicare patients hospitalized with infective endocarditis each year, the Commission recommends that no further action be taken on the issue of infective endocarditis at this time.

Chapter 4

Areas for Further Study and Consideration

The Commission's recommendations focus on achieving both technical and general improvements in PPS within the context of today's changing health care environment. Beyond its recommendations, the Commission believes other issues require serious consideration in the future.

Areas for further study and possible future recommendations are presented in this chapter. The first major area discussed is measurement of case mix. Next, plans for analyzing the data and methods used to calculate the payment amounts are outlined. A number of other issues on the Commission's analytic and research agenda, such as measuring changes in quality of care and in the hospital product, are also described.

The legislative and executive branches are considering several health policy proposals. If these proposals are adopted, the Commission will reexamine its recommendations and proceed with additional analytic work. Some of these proposed policy changes are highlighted at the end of this chapter.

IMPROVING THE MEASUREMENT OF CASE MIX

The DRG patient classification system describes and measures hospital case mix and serves as the basis for payment under PPS. The system uses the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) coding system to categorize discharges into 468 DRGs. The strengths and limitations of ICD-9-CM as a disease and procedure coding system and DRGs as a measure of case mix, resource consumption, and hospital output need to be assessed further. The Commission has identified some of the potential weaknesses of DRGs as a case-mix measurement tool, as well as several issues relating to DRG classification and the setting of weights. Other issues have been raised by concerned individuals or groups and by Commission staff.

This section summarizes the general problems and specific diagnostic and therapeutic practices that will be the basis of a significant portion of the Commission's work. (For further discussion, see Technical Appendix C.)

General Areas for Further Analysis

There are several problems in using DRGs as a case-mix measure. These problems are organized into three basic topics:

- DRG construction and classification,
- PPS implementation policies, and
- Changes in medical practices and technologies.

DRG Construction and Classification

The Commission will evaluate the original data and methods used to construct DRGs to develop recommendations for improving case-mix measurement.

Data Bases Used for DRG Construction and Classification.—The DRG patient classification system was constructed using data bases intended to represent a national sample of hospitals. Some of these data may not have been precise enough to classify and group hospitals and patients accurately. In addition, the data bases may not have adequately represented certain types of hospitals or patient groups, and the construction and classification of DRGs may not appropriately reflect the national distribution of hospital and patient types.

Diagnosis and Procedure Codes.—DRGs are based on ICD-9-CM codes developed almost a decade ago. The codes are not scheduled for revision until the 1990s. Infrequent updating of diagnostic and procedure codes may be adequate for

the statistical uses of ICD-9-CM but inadequate for PPS. The Commission may want to consider an appropriate mechanism to add new codes reflecting changes in medical technologies, practices, and procedures before the scheduled revision of ICD-9-CM.

DRG Assignment Criteria.—Initial DRG partitioning is based on principal diagnosis and operative procedure. Further partitioning may be based on age, secondary diagnoses (complications and comorbidities), and disposition. There are several issues relating to the use of these variables in DRG construction and assignment and their potential effects when used for PPS.

- *Principal Diagnosis:* The initial partitioning in DRG assignment is based on the principal diagnosis for the discharge described by an ICD-9-CM code. When no single condition causes the patient's admission, there may be ambiguities in determining the principal diagnosis and in selecting an appropriate code. In addition, the principal diagnosis may not always be the most resource-intensive condition.

- *Operating Room Procedures:* In DRG assignment, discharges are initially categorized into one of 23 Major Diagnostic Categories (MDCs), according to the principal diagnosis. Then the MDCs are divided into 468 DRGs, depending upon the presence or absence of an operating room (OR) procedure and other factors. Several issues relating to the use of OR procedures in DRG assignment will be explored, including: (1) completeness, consistency, and accuracy of the list of OR procedures; (2) inclusion of new procedures; and (3) undesirable incentives that may result from the current use of OR procedures in DRG assignment.

- *DRG 468:* Performance of a procedure considered unrelated to the principal diagnosis generally places a discharge into DRG 468. This may lead to inappropriate DRG assignment and may result in DRG 468 being heterogeneous, both clinically and in terms of resource consumption. The assumptions used in relating specific procedures to particular MDCs and DRGs may warrant evaluation to ensure correct assignment of cases to DRG 468.

- *Secondary Diagnoses:* The DRG patient classification system uses secondary diagnoses to determine the presence of complications and/or comorbidities (CCs) in about 200 DRGs. Further analysis is required to determine: (1) completeness, consistency, and accuracy of the list of CCs; (2) how the sequence or combination of these secondary diagnoses affect DRG assignment; and (3) the ability of CCs to explain differences in resource consumption within DRGs.

- *Multiple Procedures or Multiple Diseases During One Admission:* Some patients may undergo several procedures or present multiple diagnoses during one hospitalization. PPS generally provides higher payments for separate admissions than for treating all existing conditions in one admission. This may create inappropriate incentives for some cases. Additionally, international coding rules dictate that some conditions or procedures are more accurately described by combinations of codes. The present use of one diagnosis and/or procedure code at any of the partitions in DRG assignment, rather than combinations of codes, requires further examination.

- *Patient Age:* In a number of DRGs, age is used for DRG assignment. The age breaks are generally 0 to 17 years, 18 to 69 years, and 70 years and more. Other age breaks may be more appropriate for determining DRG assignment for the Medicare population because they would create more homogeneous patient groups, clinically and in terms of consumption of resources.

- *Disposition:* Some DRG assignments include patient disposition such as transferred, left against medical advice, or died. For example, a few DRGs use death during hospitalization in the assignment criteria. Similarly, some DRGs use case transfer from one hospital to another in DRG assignment. The use of disposition in DRG assignment may warrant further analysis.

Homogeneity Within DRGs.—Cases grouped into a DRG may be dissimilar clinically or in terms of resource consumption. The data and methods used to estimate resource consumption may have been imprecise, resulting in inappropriate grouping of low resource- and high resource-consuming cases into certain DRGs. Some DRGs appear more clinically heterogeneous than others. The implications that varying degrees of heterogeneity may have for payment purposes require examination. Mechanisms for further minimizing differences within DRGs, such as stage or severity of illness distinctions, should be assessed.

Case-Mix Distribution Among Hospitals.—Certain institutions may treat a subset of cases within a DRG. Thus, their cases are substantially different than the distribution of cases typically in that DRG, making an average payment inappropriate. For example, hospitals offering very specialized services are more likely to treat cases using these services, which may skew the distribution of their cases within a DRG. Because resource consumption of cases may differ by type of institution, current payments may not be appropriate for all types of institutions.

Implementation Policies

Some problems in the use of DRGs are due to policies governing payment for certain types of cases. The Commission will examine these policies to determine whether changes would result in more accurate and appropriate payments.

Outlier Policy.—Problems may exist in both the criteria used to determine outlier status and the payment amount for these cases. Current payments for outlier cases may not accurately reflect increased consumption of hospital resources by these patients. This may be a particular problem for hospitals that treat many of these cases.

Indirect Medical Education.—An additional allowance is paid on the Federal portion of each PPS payment for discharges from hospitals with approved medical education programs. This allowance for indirect medical education costs serves as a proxy for a number of factors that may increase the cost of care in teaching institutions but that are not otherwise adequately recognized under PPS. The Administration has proposed reducing this allowance to half of its current level. Others argue that the indirect medical education allowance should be continued at its current rate until adjustments are made for the other factors, such as severity of illness, which were the basis for creating the indirect allowance. The Commission will continue to monitor the work in this area.

Transfer Policy.—In the data bases used to create DRGs, a transfer of a patient between two hospitals was recorded as two stays. These two stays were averaged with all other stays to set DRG weights. To the extent that transfers involved a very short initial stay and a longer stay at the discharging hospital, averaging may result in inappropriate payment for certain cases.

Use of DRGs by Other Third Party Payers.—The DRG categories were created using data from acute care hospitals generally. The standardized amounts and DRG weights, however, were set primarily using data from the Medicare program and reflect the costs of caring for Medicare beneficiaries. Several other private and public third-party payers have begun to use DRGs for payment. Because of its statutory mandate, the Commission will focus on changes in DRGs which serve the needs of the Medicare program. As a result, the changes recommended by the Commission may not necessarily be appropriate for the other payers. The extent to which the Commission will respond to the needs and problems of other payers is still unresolved.

Changes in Medical Practices or Technologies

Incorporating new or changing technologies and practices into an existing case-mix measurement system requires improved data and timely updating of the system. A mechanism may be necessary to determine DRG classifications and weights (prices) in the absence of historical data, so that diffusion of new devices or practices is not inappropriately retarded.

Coding of New Technologies or Practices.—When a new technology is adopted or a practice pattern changes which cannot be adequately identified by an existing ICD-9-CM code, new diagnosis or procedure codes may need to be created and incorporated into existing or new DRGs. An

expedited timetable for incorporating codes for new technologies or practices may also be desirable.

Distribution of New Technologies and Procedures.—A new and expensive device or procedure may be adopted by only a small number of hospitals. Thus, it may be inappropriate for the payment to all hospitals to reflect the cost of this device or procedure. The Commission is examining payment mechanisms that would not overcompensate or undercompensate hospitals for using these new technologies or procedures.

DRGs with High Device Costs.—DRG weights are based on resource consumption, including the use of sometimes costly devices. Hospital payments are adjusted to reflect differences in location, wage rates, medical education, and outlier cases. The Commission will examine the appropriateness of applying these adjustments to DRGs where the cost of the device is a substantial proportion of total patient care costs.

Diagnostic and Therapeutic Practices for Further Analysis

The Commission discussed the following specific issues illustrating the general areas described previously. Although information was insufficient to develop recommendations, the Commission intends to continue its analysis of these issues. In the future, the Commission will discuss and analyze additional issues as well.

Cyclosporine Used in Renal Transplantation

- Cyclosporine is a new drug that may improve outcomes for many organ transplantation recipients. It was approved by the Food and Drug Administration (FDA) in late 1983.
- Cyclosporine may alter the hospital resources required for patients undergoing transplantation, for both the initial length of stay and over the long term by preventing or lessening rejection episodes.

The Commission is primarily concerned about the impact of cyclosporine use on treatment of renal transplant patients. A Federal Task Force on Organ Transplantation was appointed in early 1985 to examine all issues related to organ transplantation including payment for transplantation and immunosuppressive medications. The Commission is monitoring work by the Task Force, as well as the Health Care Financing Administration (HCFA) and the American Council on Transplantation, as part of its continuing analysis.

Magnetic Resonance Imaging

- Magnetic resonance imaging (MRI) is a new diagnostic technology with many potential applications. Widespread use of this technology may alter resource consumption in many DRGs.
- MRI involves very large capital expenditures and generates high operating costs. It may substitute for other imaging technologies in some instances and, in others, may be added to the procedures now used.

MRI is the subject of ongoing research related to design, clinical applications, and cost. The Commission is continuing its analysis of the clinical applications, capital and operating costs, and the impact of this technology on quality of care. Alternative payment mechanisms for new technologies, particularly those involving multiple DRGs, will be examined as a general issue using MRI and other technologies as case studies.

Dual Joint Procedures in One Hospitalization

- Bilateral total hip replacements and other dual joint replacement procedures may be performed in two hospital stays or in one hospitalization for a subset of patients. A single hospitalization may involve two operations or one operation when both joints are replaced.
- DRG assignment and payment are the same whether one joint or two are replaced during a stay, although the resource inputs may be quite different.
- There are differing opinions in the medical community regarding patient selection and the efficacy of performing two joint replacements in one hospitalization. Available data bases contain little information on the extent of this practice and its associated costs.

Current payment policies may create incentives for two hospitalizations when one would be more appropriate. The Commission will examine the appropriateness of current payment mechanisms for admissions involving multiple procedures during one hospitalization. More current and complete data are being gathered by the Commission and by HCFA. The Commission will continue to consult with HCFA, review the data and methodologies, and make recommendations at an appropriate time when data are available.

Alcohol Dependence DRG

- The alcohol dependence DRG includes both detoxification and rehabilitation services. These treatments may require different hospital resource inputs in terms of both length of stay and type of services.
- Several studies are under way to furnish information on services provided for detoxification and rehabilitation, alternative classification systems for alcohol dependence, and effects PPS may have on services provided to patients.
- Alcohol and drug abuse hospitals and units are exempt from PPS until October 1985.

The current DRG classification may create inappropriately heterogeneous groups, clinically and in terms of resource consumption. The Commission recognizes that HCFA and others are conducting research on this issue. The Commission will consult with HCFA and other groups and use available data in making any recommendations regarding more appropriate DRG classifications or weights for patients undergoing treatment for alcohol dependence.

Cochlear Implants

- The cochlear implant is a new prosthesis that assists persons with certain hearing impairments. A single channel device was conditionally approved by the FDA in November 1984. A multichannel device is currently under review by the FDA for premarketing approval.
- This procedure has no specific ICD-9-CM code. Once the code is determined, it could potentially be assigned to the DRG for miscellaneous ear, nose, and throat surgery or the DRG for major head and neck surgery. The other procedures in these DRGs may involve very different use of hospital resources.
- When the Commission considered this technology, the single channel device had not received marketing approval from the FDA. To date, experience with this device has been limited.

The Commission will continue to examine the specific issues this topic raises as well as the general issue of payment for new technologies where cost and charge data are insufficient for appropriate DRG assignment and calculation of weights.

Extracorporeal Shock Wave Lithotripsy

- Extracorporeal shock wave lithotripsy (ESWL) is a new, noninvasive procedure that substitutes for invasive surgery for certain types of kidney stones.
- ESWL is a capital-intensive technology with high operating costs.
- This procedure has no unique ICD-9-CM code. To group cases involving ESWL into a DRG, a procedure code needs to be assigned, and ESWL has to be designated as either a medical or surgical procedure.
- When the Commission considered this technology in 1984, it had not received marketing approval from the FDA. In late 1984 the FDA approved ESWL for marketing, although only a few centers currently have units. Data concerning patient outcomes and the resources consumed by patients treated with ESWL are preliminary.

The Commission will continue to examine ESWL, in consultation with HCFA, and make recommendations when more data are available. The Commission will view ESWL as one of several illustrations of the general issue of payment for new technologies where cost and charge data may not be sufficient for determining appropriate DRG assignment and calculation of weights.

Dermatologic Disorders

- Cases classified into one of five DRGs related to dermatologic disorders may comprise inappropriately heterogeneous patient populations, clinically and in terms of resources required for their care.
- Cases with differing levels of severity of illness may not be evenly distributed among all types of hospitals, since certain institutions may treat more severe, resource-intensive dermatologic cases than others.

The Commission will examine potentially inappropriate classification of cases in these DRGs. In addition, it will examine the issue of unequal distribution of resource-intensive cases among different types of hospitals.

Cystic Fibrosis

- Cystic fibrosis (CF) patients may be inappropriately classified into DRGs with patients having less resource-intensive conditions.
- The data bases used to create DRG classifications and weights may have underrepresented certain patient and hospital groups.

Although the issue of CF is not of direct relevance for Medicare due to the small number of Medicare patients involved, the Commission will examine the general issues this topic raises.

Alternative Approaches to Case-Mix Measurement

The potential problems noted in using DRGs for PPS indicate the need to improve the case-mix measurement tool. The Commission will examine three broad approaches to improving case-mix measurement: (1) retain the current DRG system based on ICD-9-CM coding, but revise it in an incremental fashion as continued experience reveals problem areas; (2) retain the current system in principle, but reconstruct it using a newer and more complete data base; and (3) consider an alternative case-mix measurement system, either in conjunction with DRGs or to replace DRGs.

Incremental Change

Many problems could be corrected in an incremental fashion leaving the basic construction, classification, and weighting of the DRG system intact. Incremental change could involve improvements such as: splitting DRGs to create more homogeneous groupings; combining DRGs; examining different age breaks to find the ones that minimize variance in resource consumption; and incorporating new ICD-9-CM codes into the DRG system.

The Commission is concerned that changes be made only when they can be validated using the best available data. The incremental approach makes each of these changes somewhat separate and iterative. The cumulative effect of such changes may be a case-mix measurement tool that differs in many important respects from the current DRG system.

Reconstruction of DRGs

The Commission also will examine the possibility of reconstructing the DRG system using more current, accurate, and complete data. Improved data might resolve many of the problems noted such as identification of cases involving multiple procedures or diagnoses. DRGs could be reconstructed so that such cases are explicitly identified and grouped. When weights are calculated, payment would more accurately reflect the resource consumption of these cases.

Reconstruction could also facilitate certain health policy changes. For example, improved data would permit better identification of transfer patients and their consumption of resources. Based on this information, appropriate changes could be made in transfer policy.

The Commission recognizes that each time a change is made, there is a certain degree of administrative burden, for both HCFA and the hospital industry. Reconstructing the entire system, while involving major changes, might in the long run reduce the administrative burden more than an incremental approach. Reconstructing the sys-

tem need not preclude minor incremental changes that may be necessary over time, such as inclusion of new codes to identify new technologies.

Alternative Case-Mix Measurement Systems

The Commission will examine several case-mix measurement systems currently in various stages of research and development. They include disease staging, severity of illness, patient management categories, and systems based on physiological measurements in conjunction with other patient characteristics. These systems differ by type and number of variables used to group patients. The systems were developed for utilization review, reimbursement, quality assurance, and patient management. Such systems generally use either patient medical records or discharge abstracts as their main data source. For prospective payment purposes, such systems appear to fall into two groups: those that could be applied in conjunction with DRGs and those that could substitute for DRGs.

Systems Designed to Be Used in Conjunction with DRGs.—Several systems under development might improve DRGs. For example, systems that outline several stages of disease or severity of illness levels could segregate cases further to increase homogeneity. The underlying assumption of these systems is that patients in more advanced stages of disease require more hospital resources than patients who are less severely ill. Application of such a system in conjunction with DRGs might eliminate some of the flaws previously identified, although it would not necessarily address other DRG problems, since the existing system is modified but left essentially intact. This does not preclude the option of performing a reconstruction of the system at the same time.

Systems to Replace DRGs.—Rather than modifying the existing DRG system, alternative systems are under development that could replace DRGs entirely. It may be advantageous to implement a new, presumably better system that would not contain many of the flaws identified in DRGs. Any new system, however, might contain other deficiencies. While DRGs present certain problems, the benefits of this system are uncertain because it has been in effect for a relatively short time, initial flaws have not yet been corrected, and the transition to fully implemented PPS is not complete. The Commission is concerned that the momentum initiated by PPS not be interrupted. A major change, such as a new case-mix measurement system, should only be undertaken if it groups cases for payment purposes more accurately than the current system. This cannot be determined until the benefits and the problems of the DRG system are more fully assessed.

The Commission will examine the more fully developed alternative systems, both those that replace and those that complement DRGs. The ability of such systems to produce groups that are medically meaningful, statistically homogeneous, and reflective of resource consumption will be assessed.

IMPROVING THE CALCULATION OF PAYMENT AMOUNTS

Problems related to the lack of timely, accurate, and consistent data for setting payment amounts have been repeatedly discussed throughout this report. The Commission is concerned with these problems and plans to examine them more fully in the future.

The following section identifies specific problems associated with the data used to set the standardized amounts and to determine the DRG weights. In addition, this section outlines approaches the Commission will consider that are directed toward improving the calculation of the payment amounts.

Setting the Standardized Amounts

The standardized amounts are derived from data supplied on hospitals' Medicare Cost Reports. On the cost report, hospitals are required to record extensive information including ag-

gregate charges and aggregate costs by department and Medicare charges in each department.

The Commission has identified several problems associated with using aggregate cost information in calculating payment amounts for individual cases. Specifically, cost per case estimates generated from cost report data may not accurately reflect the cost of resources necessary to treat Medicare patients. This inaccuracy results from cost reporting practices such as:

- Lack of uniformity in reporting cost data,
- Limitations in the cost allocation process,
- Opportunities for manipulation of cost data, and
- Problems caused by the incentives of cost-reimbursement.

Furthermore, the most recent audited cost report data available at any given time are generally three years old.

In addition to the problems noted above, practices employed by the hospital industry to set the charges used in the calculation of cost-to-charge ratios included on the cost report do not necessarily correspond to actual resource costs. For example, many hospitals charge for operating room services based on an hourly rate (or some fraction of an hour). This method assumes that each hour of service consumes the same amount of resources. In actuality, however, different operating room procedures require varying amounts of personnel and equipment. Therefore, use of hourly rates results in underpricing and overpricing of services. (For further discussion, see Technical Appendix C.)

In setting payment, the process of standardization adjusts each hospital's average cost-per-case to place hospitals on a comparable basis. The Commission believes that improvements in the adjustments to account for differences in area wages, costs related to caring for a disproportionate share of low-income patients, and other costs related to the characteristics of hospitals and their patients, are necessary to make PPS payments more equitable.

During the next year, the Commission intends to examine in greater detail the limitations and inaccuracies of the data used to calculate and adjust the standardized amounts. Analysis will focus on the reliability of cost data as an indicator of resource consumption, the refinement of adjustments, and the collection of comparable data from all PPS hospitals. Moreover, the Commission will be developing options for future recalculation of the standardized amounts based on more recent data, as described in Recommendation 16 in Chapter 3.

Determining the DRG Weights

Establishing DRG weights involves the following data: (1) per-diem costs for routine and special care units (including nursing and other services); and (2) ancillary service costs and charges for revenue-producing departments of the hospital. Limitations of these data are described below. (For further discussion, see Technical Appendix C.)

Per-Diem Costs—Nursing Services

The method used to allocate nursing costs assumes that every patient uses the same amount of nursing resources per day, regardless of the patient's clinical condition and need for nursing care. The Commission has examined evidence suggesting that this method may have introduced significant inaccuracies in the DRG weights. Recalibration using charge data as recommended by the Commission for fiscal year 1986 would not correct this problem since the same assumption is made using per-diem charges. (For further discussion, see Technical Appendix C.)

The Commission's first concern regarding allocation of nursing costs relates to equity of PPS for Medicare beneficiaries and hospitals. If the DRG weights do not accurately reflect resource use, overpayment or underpayment for certain diagnoses may result. This issue is important because nursing costs represent a significant portion of a hospital's operating budget and an even larger share of its labor expenses. Depending on the case mix served, some hospitals may not be adequately compensated for services provided while others may receive payments in excess of their costs. Faced with these inequities in payment, hospitals may limit admissions or reduce services for patients requiring intensive nursing care. As a result, Medicare beneficiaries may receive lower quality care or have less access to services.

The Commission's second concern relates to the ability of the DRG patient classification system to account adequately for the severity of the patient's illness. It has been argued that more severely ill patients usually require a higher intensity of nursing care, resulting in higher hospital costs. Therefore, a more precise measure of nursing resource use may improve the DRG system's ability to reflect more accurately the variation in resource use among cases. If DRG weights were adjusted to reflect variations in nursing intensity among types of patients, payments would, presumably, be more equitable among hospitals. In addition, the perceived need for modifying the DRG system for illness severity may be diminished.

The Commission will analyze the current per-diem method for allocating routine and special care nursing costs to each DRG to determine whether the DRG weights accurately reflect the cost of nursing services. If not, alternative methods for allocating nursing costs on a diagnosis-specific basis will be explored. The Commission will also examine whether improvements in measuring nursing resource use may minimize the need perceived by some to adjust the system otherwise for severity of illness.

The Commission regards allocation of nursing costs as a sufficiently important issue to suggest that the Secretary of the Department of Health and Human Services also examine this topic. The Commission will collaborate with the Secretary to ensure that its efforts in this area are coordinated and mutually productive.

Per-Diem Costs—Other Services

Per-diem costs and charges also include housekeeping, dietary, laundry, and similar resources used by the patient during a stay. Therefore, the method for allocating these costs to DRGs may introduce some of the problems noted for nursing costs. In addition, the change in reimbursement policies may affect the accuracy of these costs. The previous cost reimbursement system provided the incentive to assign costs to inpatient services rather than to outpatient services in order to maximize reimbursement. The routine (Section 223) cost limits, however, restricted the hospitals' ability to attribute these costs to inpatient routine services. Prospective payment provides further incentives to assign costs to outpatient services.

The Commission will examine the methods used to derive per-diem costs and charges for other services to determine whether they are accurately reflected in the DRG weights. The Commission will also evaluate alternative approaches for allocating other service costs to DRGs if necessary.

Ancillary Service Costs

The limitations of Medicare Cost Report data and hospital charge-setting practices also affect the accuracy of allocating costs of ancillary services to DRGs. The cost-to-charge ratios used to assign costs for ancillary services may introduce errors in the calculation of the DRG weights and the payment amounts. This methodology, intended to provide a correction for interdepartmental variation in markups due to hospital price setting, may introduce overpricing and underpricing of DRG payment amounts.

The estimate of ancillary costs is derived by multiplying Medicare charges by the hospital departmental cost-to-charge ratio. For the six departments listed on the Medicare claim form, the actual cost-to-charge ratio is used. All remaining ancillary charges are aggregated into one "department," and an average cost-to-charge ratio is used. If the cases in a DRG have a significant number of ancillary services which are aggregated, this averaging process may lead to an inaccurate DRG weight.

Under the Commission's recommendation for recalibration using charge data, cost-to-charge ratios would not be used. However, hospital charge-setting practices might still distort relative DRG weights.

The Commission plans to examine the impact of hospital charge-setting practices and the cost-to-charge methodology on the assignment of ancillary service costs to DRG weights.

Approaches to Modifying DRG Weights

The Commission will continue to examine two general approaches to modifying the payment amounts: recalibration/reweighting and pricing.

Recalibration/Reweighting

The Commission considered several options for recalculating the entire set of DRG weights (recalibration) or a subset of the DRG weights (reweighting). For fiscal year 1986, the Commission recommends recalibration using the most recent charge data available. In the future, three alternative sets of data could be used for recalibration or reweighting: (1) costs and charges from the same year; (2) costs and charges from different years; or (3) charges only.

Ideally, cost and charge data from corresponding years should be used; the data should be as current as possible to reflect patterns of care and technology usage. Using data from different years results in applying the costs of services to charges for a different set of services and possibly introducing a new type of error into the rates. In addition, the Commission is concerned that the continued use of charge data alone to set DRG weights might offer opportunities for hospitals to manipulate the weights of some DRGs. It may be possible to continue to recalibrate using only charges if the incentives of PPS, data reporting requirements, or processing methods result in charges that more accurately reflect resource costs. If, however, evidence shows that significant cross-subsidization or other bias in setting charges still exists, an alternative method for determining DRG weights will be necessary.

During the next year, the Commission will examine this issue further to determine an equitable, accurate, and timely approach to recalibration and reweighting of the DRGs.

Pricing

As noted previously, there may be times when adjustments to individual DRG weights will be necessary in the absence of appropriate Medicare cost or charge data. In such cases, the Commission will explore the feasiblility of establishing prices for individual DRGs to support, or replace, the recalculation of one or more DRG weights. This method might be particularly useful in determining payment amounts for new medical practices or technologies in the absence of adequate cost and charge data.

DRG weights could be calculated by using information from manufacturers, professional groups, hospitals, and others to estimate the cost of care for a particular DRG. This cost estimate could then be converted to a DRG weight for payment. The pricing technique offers the advantage of using information from a variety of sources in addition to, or in place of, Medicare cost and charge data. Thus, this technique eliminates the problems previously outlined relating to the limitations of the Medicare data.

In summary, the Commission will examine the limitations of cost and charge information and the use of this information in setting the standardized amounts and the DRG weights. For example, to reduce lag time, the Commission may consider using information from cost reports as submitted (rather than waiting for auditing to be completed) or final reports from a sample of hospitals. Alternatively, the standardized amounts might be set by systematically developing uniform cost information from a sample of hospitals. The Commission plans to study these and other options to reduce the problems associated with the quality of cost and charge data and to improve the timeliness, accuracy, and equity of payments under PPS.

OTHER ISSUES TO BE CONSIDERED BY THE COMMISSION

Further analysis in the areas described previously is directed toward developing recommendations regarding specific improvements in case-mix measurement and the calculation of payment amounts. Other issues requiring further study are briefly discussed below.

Measuring Quality of Care and Health Outcomes

The Commission recognizes its statutory responsibility to monitor changes in the quality of care and health outcomes for Medicare beneficiaries. The assessment of these changes in terms of past and current practices will influence the Commission's future recommendations regarding DRG classifications and weights and the update factor for payments. In the formation of its analytic agenda, the Commission has placed high priority on assessing existing information, developing new data bases to make quality assessments, and improving current measures of quality of care and health outcomes. The Commission's data development and analysis will supplement the evidence gathered by Peer Review Organizations and the studies of quality of care by others in government and in the private sector.

Measuring Real Case-Mix Change

The Commission has recommended that the Secretary of the Department of Health and Human Services estimate and incorporate an allowance for real case-mix change occurring during fiscal year 1985 in the update factor for fiscal year 1986. The Commission recognizes that distinguishing changes in real case mix from those arising from altered coding practices is a difficult but important task. Therefore, it plans to monitor HHS's activities and to continue to consult with and make recommendations to the Secretary on this subject.

Measuring Change in the Hospital Product

PPS may contain incentives for changing the hospital product. Faced with these incentives, hospitals may substitute inpatient services with services provided in outpatient settings or other alternative sites of care. The Commission recognizes the importance of these hospital product changes in updating payment amounts, changing DRG classifications and weights, and affecting the health outcomes of Medicare beneficiaries. The Commission plans to develop methods for measuring changes in the hospital product and to monitor the effects of such changes.

Regional Practice Pattern Variations

The statute identifies regional variation in medical practice as an important consideration in making recommendations for updating and creating DRGs and establishing relative weights that accurately reflect appropriate differences in resources consumed. In addition, practice pattern variations contribute to the problems of defining the hospital product and measuring quality of care. The Commission will collect and assess information on these subjects with emphasis on variations involving costly or potentially inappropriate services.

Disproportionate Share Hospitals

The Commission has identified the need for specific adjustments for hospitals serving a high number of low-income patients to offset the higher costs of treating them. In its recommendations, the Commission has requested that HHS develop an appropriate definition of disproportionate share hospitals and a methodology for implementing an adjustment for such hospitals. The Commission will examine decisions made by the Secretary regarding the definition and treatment of disproportionate share hospitals. It will work cooperatively with HHS to develop appropriate definitions and methods of calculating adjustments to payment amounts.

Hospital Market Area Definitions and Wage Indexes

The Commission has recommended that the Secretary correct inadequacies in the current hospital market area definitions. The purpose of this correction is to better reflect hospital labor markets in the application of the hospital wage index adjustment to the payment amounts. In particular, the Commission has identified the need to distinguish between inner city and suburban areas within an MSA and between different rural areas within a state. The Commission will review the decisions made by the Secretary regarding this recommendation. In addition, the Commission will participate in studies regarding the magnitude of labor market differences in these areas and methodologies for drawing boundaries.

Effects of the Transition

The Commission recognizes the importance of the transition from payments based on hospitals' past costs to payments based on national averages. Over the next few months, the Commission plans to further analyze the impact of the transition on various types of hospitals. The effect of the transition will be assessed in light of concerns with the method currently used to determine the prospective payments as well as other policy changes. The analysis will use information that reflects, to the extent possible, changes in hospital behavior since PPS was developed.

Additional Analytic and Data Development Activities

The Commission will conduct and support research, as needed, to augment staff analyses regarding improvements in case-mix measurement and the updating of payment amounts. This may include, for example, further analysis of issues concerning the construction of the hospital market basket.

Finally, the Commission will consider other research topics that provide a broad view of the effects of PPS. A major effort will be a synthesis of data and anecdotal evidence on the effects of PPS on the health care system. This study will focus on changes in overall Medicare expenditures under PPS, for both inpatient and outpatient services. In addition, the study will include the effects of PPS on hospital behavior, operating structure, management strategies, and delivery of health care services.

The Commission is authorized by statute to collect and assess information to support the analytic agenda described above. To the extent possible, the Commission will carry out this responsibility using existing information, collected and assessed by its own staff, as well as analysis of others. It is also necessary for the Commission to award grants and contracts to support its data development, analysis, and research activity. Most Commission expenditures in these areas will be through open competition in response to grant solicitations or requests for proposals in a variety of areas relevant to PPS. Some portion of the budget will be for smaller projects obtained through limited competition or sole-source arrangements.

In forming its analytic agenda, the Commission identified a range of research issues and topics and established priorities among them. This process was guided by congressional statements of the role and responsibilities of the Commission. Two additional criteria will be used for defining the content and scope of each research effort. The first is the extent to which other organizations within the government and in the private sector are conducting research relating to each topic. Studies relevant to PPS will be monitored in the process of carrying out the research agenda to avoid duplication of efforts. The second is a consideration of the feasibility of each topic to ensure that analytic results contribute to the decision-making process of the Commission in terms of the content and timeliness of the research and the feasibility of completing the study at a reasonable cost.

The Commission's current extramural research agenda includes studies that focus on the specific topics previously identified. Data acquisition and data base construction are ongoing and will continue to be governed by the analytic priorities of the Commission.

OTHER POLICY CHANGES THAT MAY AFFECT PPS

The Commission's recommendations were developed in light of current PPS policies. There are a number of emerging issues in Federal health policy that may affect PPS hospitals and Medicare beneficiaries. The Commission recognizes its responsibility to respond to health policy changes; therefore, it is likely that additional issues will occupy its attention during the next year.

The Commission wants to note specific issues currently under discussion in the executive and legislative branches of the government and reported in the media. Many of these issues may have a profound effect on the overall impact and functioning of PPS.

In the Administration's fiscal year 1986 budget, it has proposed several actions which would significantly affect PPS. A major initiative would "maintain reimbursement under the prospective payment system" for fiscal year 1986 with rates at the level of those in effect for fiscal year 1985. Savings of $1.8 billion for fiscal year 1986 are associated with this proposal, which the Department of Health and Human Services anticipates implementing under current law. The Department further states that new legislation "will be sought if an application of current law does not achieve this level of savings."

Another Administration proposal having a major effect on PPS would "eliminate doubling of indirect medical education payments," with an anticipated savings of $695 million in fiscal year 1986. This proposal requires legislative change.

A final budget proposal submitted to the Congress would "freeze payment for direct medical education," with a savings estimate of $150 million for fiscal year 1986.

In addition to the Administration's budget proposals, Public Laws 98-21 and 98-369 contained provisions for further policy changes in PPS in the future. Although capital costs are passed through under current law, Pub. L. 98-21 requested a report by October 1984 on "methods and proposals for legislation by which capital-related costs, such as return on net equity, associated with inpatient hospital services can be included within the prospective payment amounts." Although this report has not yet been submitted, the Commission anticipates that the inclusion of capital within PPS will be a topic of extensive policy debate in the coming months.

The Congress also requested that the Secretary report and prepare legislative recommendations by July 1, 1985, "on the advisability and feasibility of providing for the determination of payments based on a DRG-type classification for physicians' services furnished to hospital inpatients." The inclusion of physician payments within a DRG-based system will be a critical topic for future policy debate.

Pub. L. 98-369 requires the Secretary to adjust the prospective payment wage index "taking into account wage differences of full time and part time workers," with such adjustments considering overpayments and underpayments retroactive to October 1, 1983. Potentially this would have a major impact on hospital payments under PPS.

These or other health policy changes may require the Commission to modify its analytic plans or reconsider certain recommendations. The Commission will consider policy changes in the context of its role, responsibilities, and priorities; the overall goals of PPS; and the distributional consequences of the alternatives.

The Commission believes it has a long-term role related to maintaining and updating PPS. In the future, significant changes will continue to occur that will influence the direction of health care delivery and financing. As these changes develop, additional items will be placed on the Commission's analytic agenda. These items will be examined and recommendations will be made, where appropriate, to the Secretary of the Department of Health and Human Services.

[FR Doc. 85-13972 Filed 6-6-85; 11:37 am]
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federal register

Monday
June 10, 1985

Part IV

Department of Health and Human Services

Public Health Service

Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects

AGENCY: Office of Adolescent Pregnancy Programs, PHS, HHS.

ACTION: Notice.

SUMMARY: This is to announce the availability of grant funds for the Adolescent Family Life Demonstration Grants Program for the following States and territories: Alabama, Alaska, Arizona, Arkansas, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, West Virginia, Wisconsin, Wyoming, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands. These States and territories have been designated as eligible to apply for funding because they will have no more than one Adolescent Family Life demonstration grant or performance site of an Adolescent Family Life national demonstration grant as of October 1, 1985.

These grants are for demonstration projects which test new approaches to providing care services for pregnant adolescents and adolescent parents or prevention services to reach adolescents before they become sexually active as authorized by Title XX of the Public Health Service Act (42 U.S.C. 300z, *et seq.*).

The Office will also accept competing renewal applications from current Adolescent Family Life grantees in the above States and territories whose demonstration grants are ending September 30, 1985.

ADDRESS: Application kits may be obtained from and applications must be submitted to: Grants Management Office, Office of Adolescent Pregnancy Programs, OPA, Room 1351, HHS North Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

DATE: Applications must be postmarked or received at the above address no later than July 8, 1985.

FOR FURTHER INFORMATION CONTACT: Grants Management Office at area code 202/245–0146 or Program Office at area code 202/245–7473. Staff are available to answer questions and provide limited technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title XX of the Public Health Service Act, 42 U.S.C. 300z *et seq.*, authorizes the Secretary of Health and Human Services to award grants for demonstration projects to provide services to pregnant and nonpregnant adolescents, adolescent parents and their families. (Catalog of Federal Assistance Number 13.995.) This notice announces the availability of approximately $1.5 million in funding for demonstration projects for care or prevention services in certain designated States and areas as specified in the above Summary. It is anticipated that 8–10 projects can be funded, with an average award of $150,000 and a range of between $75,000 and $250,000. Grants may be approved for project periods of up to five years. Priority will be given to those projects that can be completed in three years. Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon satisfactory progress of the project, adequate stewardship of Federal funds and availability of funds. A grant award may not exceed 70% of the total costs of the project for the first and second years, 60% of the total costs for the third year, 50% for the fourth year and 40% for the fifth year. Non-Federal contributions may be in cash or in-kind, fairly evaluated, including plant, equipment, or services. We summarize below the statutory background of the grant program and describe the procedures for applying for grants pursuant to this notice.

Statutory Background

Title XX authorizes grants for three types of demonstration projects: (1) Projects which provide "care services" only (i.e., services for the provision of care to pregnant adolescents, adolescent parents and their families); (2) projects which provide "prevention services" only (i.e., services to prevent adolescent premarital sexual relations), and (3) projects which provide a combination of care and prevention services. However, in this program notice we do not propose to consider or fund any combination projects.

The specific services which may be funded under Title XX are the following:

(1) Pregnancy testing and maternity counseling;

(2) Adoption counseling and referral services which present adoption as an option for pregnant adolescents, including referral to licensed adoption agencies in the community if the eligible grant recipient is not a licensed adoption agency;

(3) Primary and preventive health services including prenatal and postnatal care;

(4) Nutrition information and counseling;

(5) Referral for screening and treatment of venereal disease;

(6) Referral to appropriate pediatric care;

(7) Educational services relating to family life and problems associated with adolescent premarital sexual relations, including:

(a) Information about adoption;

(b) Education on the responsibilities of sexuality and parenting;

(c) The development of material to support the role of parents as the provider of sex education; and,

(d) Assistance to parents, schools, youth agencies, and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(8) Appropriate educational and vocational services;

(9) Referral to licensed residential care or maternity home services;

(10) Mental health services and referral to mental health services and to other appropriate physical health services;

(11) Child care sufficient to enable the adolescent parent to continue education or to enter into employment;

(12) Consumer education and homemaking;

(13) Counseling for the immediate and extended family members of the eligible person;

(14) Transportation;

(15) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors; (and)

(16) Family planning services. See (Sec. 2002(a)(4) of Title XX of the Public Health Service Act.

No funds provided for a demonstration project for services under Title XX may be used for the provision of family planning services (other than counseling and referral services) to adolescents unless appropriate family planning services are not otherwise available in the community. Maximum use of available Title X family planning monies must be utilized.

Applicants for care projects are required to provide, either directly or by referral, 10 core services which together comprise a comprehensive program of health, education and social services. The services described in subparagraphs (1), (2), (3), (4), (5), (6), (7), (8), and (10) are core services. The services described in (16) are permissible services only when

appropriate family planning services are not otherwise available in the community. In all other cases, no funds under this Title may be used for the provision of family planning services. However, counseling and referral for family planning services must be provided as a core service.

Applicants for prevention projects are not required to provide any specific number of services. Under the statute, the services described in subparagraphs (1), (4), (5), (7), (8), (13), (14), and (15) are prevention services. Applicants may request funding for any one or more, as appropriate for the proposal.

Eligible Applicants

Any public or private nonprofit organization or agency is eligible to apply for a grant. However, as specified in the above Summary, only entities from Alabama, Alaska, Arizona, Arkansas, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, West Virginia, Wisconsin, Wyoming, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific will be eligible to apply under this announcement.

Grants are awarded only to those organizations or agencies which demonstrate the capability of providing the proposed services.

Application Requirements

Applications must be submitted on the forms supplied and in the manner prescribed in the application kits available from the Office of Adolescent Pregnancy Programs (OAPP). Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. Applicants are required to submit an original application and two copies.

A copy of the legislation governing this program will be sent to applicants as part of the application kit package. Applicants should use the legislation to guide them in developing their applications. All applicants should review and must comply with the requirements for applications in 2006(a).

Awards will be made only to those applicants who have met all applicable statutory requirements for care or prevention projects. OAPP will consider applications providing care or prevention services only but not a combination of care and prevention services.

It should be noted that grantees must not teach or promote religion in the Adolescent Family Life Title XX program. Each program shall be designed so as to be, to the extent possible, accessible to the public generally.

Care Programs—Under the statute the purpose of care programs is to establish innovative, comprehensive, and integrated approaches to the delivery of care services for pregnant adolescents, with primary emphasis on unmarried adolescents who are 17 years of age or under, and for adolescent parents and their families, which shall be based upon an assessment of existing programs and, where appropriate, upon efforts to establish better coordination, integration, and linkages among such existing programs in order to:

(A) Enable pregnant adolescents to obtain proper care and assist pregnant adolescents and adolescent parents to become productive independent contributors to family and community life; and

(B) Assist families of adolescents to understand and resolve the societal causes which are associated with adolescent pregnancy.

Within the context of providing the required care plus necessary supplemental services and developing evaluation strategies, applicants should pay particular attention to these aspects of Title XX:

- The promotion of adoption as an alternative to early parenting
- Involvement of the families of pregnant adolescents and adolescent parents, including the adolescent father
- Provision of services after delivery. (This is the continuation of necessary services to clients until adolescent parents have become or are well on their way to becoming "productive independent contributors to family and community life", and their children are developing normally physically, intellectually, and emotionally. Proposals should specify the services to be provided, the means of identifying clients' need for services, and the system for tracking clients for a period of at least two years following delivery.)
- Supporting parents as primary sex educators.

Prevention Programs—The purpose of preventing programs is to find an effective means within the context of the family of reaching adolescents before they become sexually active in order to maximize the guidance and support available to adolescents from parents and other family members, and to promote self-discipline and other prudent approaches to the problem of adolescent premarital sexual relations, including adolescent pregnancy.

Evaluation

Section 2006(b)(1) requires each grantee to expend at least one percent but not more than five percent of the funds received under Title XX on evaluation of the project. While the statute allows waiver of the five percent limit on evaluation (see section 2006(b)(1)), waivers are rarely granted. Therefore, applicants who anticipate evaluation costs in excess of the limit should exhaust all possible alternative sources of funds before considering requesting a waiver for an evaluation amount in excess of five percent. Sec. 2006(b)(2) requires that an organization or an entity independent of the grantee providing services assist the grantee in evaluating the project. Applicants should provide evidence of their working arrangements with a college or university located in the applicant's State to meet this statutory requirement. Applicants should also describe in detail measures of program performance, data collection methods, and a plan for analyzing the data.

Additional Requirements

In addition to the above, applicants for grants must meet the following requirements:

(1) Requirements for Review of an Application by the Governor

Section 2006(e) of the Public Health Service Act requires that each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to the Secretary for a grant for a demonstration project for services under this Title. The Governor shall submit to the applicant comments on any such application within the period of 60 days beginning on the day when the Governor receives such copy. The applicant shall include the comments of the Governor with such application.

An applicant may comply with this requirement by submitting a copy of the application to the Governor of the State in which the applicant is located at the same time the application is submitted to OAPP. To inform the Governor's office of the reason for the submission, a copy of this notice should be attached to the application. The Governor has 60 days in which to provide comments to the applicant.

The applicant must provide a copy of the comments or verification that there were no comments to the above address by September 23, 1985.

(2) Review Under Executive Order 12372

Applications under this announcement are subject to the review requirements of Executive Order 12372, State Review of Applications for Federal Financial Assistance, as implemented by 45 CFR Part 100. As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those States not represented on the listing, further inquiries should be made by the applicant regarding the submission to the relevant SPOC. The SPOCs comment(s) should be forwarded to the Grants Management Office, Office of Population Affairs, Room 1351, HHS North Building, 330 Independence Avenue, S.W., Washington, D.C. 20201. Such comments must be received by the Office of Population Affairs by September 23, 1985 to be considered. In the event that an application is submitted to the Office of Population Affairs without notification to the SPOC, the SPOC will be notified of the submission.

(3) Health Systems Agency (HSA) Review

In order to comply with the HSA review requirements under section 1513(e) of the Public Health Service Act, 42 U.S.C. 3001–2(e), as amended, applicants must contact the HSA responsible for the area to be served by the proposed project to determine whether or not the HSA desires to review the application. If so, a copy of the application must be submitted to each HSA for review no later than July 8, 1985. Applicants are advised to contact the local HSA as soon as a decision is made to apply for a grant for detailed information on meeting this review requirement. Applications will not receive a formal review by OAPP without satisfying this requirement.

Application Consideration and Assessment

Applications which are judged to be late or which do not conform to the requirements of this program announcement will not be accepted for review. Applicants will be so notified, and the applications will be returned.

All other applications will be subjected to a competitive review and assessment by qualified persons. The results of this review will assist the Director of the Office of Adolescent Pregnancy Programs in considering competing applications and in making the final funding decisions.

Eligible competing grant applications will be reviewed and assessed against the following criteria:

1. The applicant's provision for the requirements set forth in section 2006(a) of Title XX of the Public Health Service Act (10 points).

2. The capacity of the proposed applicant organization and staff to provide the appropriate services and to evaluate the results (15 points).

3. The applicant's presentation of the project's objectives, the methods for achieving project objectives, the workplan and the results or benefits expected (25 points).

4. The applicant's documentation of the innovativeness of the program approach, its worth for testing and replication. (25 points).

5. The estimated cost of the project to the government is reasonable considering the anticipated results (5 points).

6. The applicant's detailed evaluation plan indicates an understanding of program evaluation methods and reflects a practical, technically sound approach to assessing the project's achievement of program objectives. A workplan should be included to indicate the extent and nature of the involvement of a local State college or university in this effort (20 points).

In making grant award decisions the Director of OAPP will take into account the extent to which grants approved for funding will provide an appropriate distribution of resources throughout the country taking into consideration such things as the following factors:

1. The priorities in section 2005(a) of Title XX of the Public Health Service Act.

2. The geographic area to be served.

3. The community commitment to and involvement in the planning and implementation of the demonstration project.

4. The nature of the organization applying.

5. The population to be served.

6. The organizational models for delivery of service.

7. The usefulness for policymakers and service providers of the proposed project and its potential for complementing existing AFL demonstration models.

8. Where projects are of approximate equal quality and there are insufficient funds to fund both, priority will be given to those that can be completed in three years.

When final funding decisions have been made, all applicants will be notified by letter of the outcome of their applications. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, the budget period for which support is being given, and the amount of funding to be contributed by the grantee to project costs.

Dated: June 4, 1985.

Jo Ann Gasper,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 85–14000 Filed 6–7–85; 8:45 am]

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Federal Register

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

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7 Parts:		
0-45	14.00	Jan. 1, 1985
46-51	13.00	Jan. 1, 1985
52	14.00	Jan. 1, 1985
53-209	14.00	Jan. 1, 1985
210-299	13.00	Jan. 1, 1985
300-399	8.00	Jan. 1, 1985
400-699	12.00	Jan. 1, 1985
700-899	14.00	Jan. 1, 1985
900-999	14.00	Jan. 1, 1985
1000-1059	12.00	Jan. 1, 1985
1060-1119	9.50	Jan. 1, 1985
1120-1199	8.00	Jan. 1, 1985
1200-1499	13.00	Jan. 1, 1985
1500-1899	7.50	Jan. 1, 1985
1900-1944	12.00	Jan. 1, 1985
1945-End	13.00	Jan. 1, 1985
8	7.50	Jan. 1, 1985
9 Parts:		
1-199	13.00	Jan. 1, 1985
200-End	9.50	Jan. 1, 1985
10 Parts:		
0-199	17.00	Jan. 1, 1985
200-399	9.50	Jan. 1, 1985
400-499	12.00	Jan. 1, 1985
500-End	14.00	Jan. 1, 1985
11	7.50	Jan. 1, 1985
12 Parts:		
1-199	8.00	Jan. 1, 1985
200-299	14.00	Jan. 1, 1985
300-499	9.50	Jan. 1, 1985
500-End	14.00	Jan. 1, 1985
13	13.00	Jan. 1, 1985
14 Parts:		
1-59	16.00	Jan. 1, 1985
60-139	13.00	Jan. 1, 1985
140-199	7.50	Jan. 1, 1985
200-1199	15.00	Jan. 1, 1985
1200-End	8.00	Jan. 1, 1985
15 Parts:		
0-299	6.50	Jan. 1, 1985
300-399	13.00	Jan. 1, 1985
400-End	12.00	Jan. 1, 1985
16 Parts:		
0-149	9.00	Jan. 1, 1985
150-999	10.00	Jan. 1, 1985
1000-End	13.00	Jan. 1, 1985
17 Parts:		
1-239	14.00	Apr. 1, 1984
240-End	13.00	Apr. 1, 1984
18 Parts:		
1-149	12.00	Apr. 1, 1984
150-399	15.00	Apr. 1, 1984
400-End	7.00	Apr. 1, 1985
19	17.00	Apr. 1, 1984
20 Parts:		
1-399	8.00	Apr. 1, 1985
400-499	13.00	Apr. 1, 1984
500-End	14.00	Apr. 1, 1984
21 Parts:		
1-99	9.00	Apr. 1, 1985
*100-169	11.00	Apr. 1, 1985
*170-199	13.00	Apr. 1, 1985
200-299	4.25	Apr. 1, 1985
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500-599	16.00	Apr. 1, 1985
600-799	6.00	Apr. 1, 1984
*800-1299	10.00	Apr. 1, 1985
1300-End	5.50	Apr. 1, 1985
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24 Parts:		
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*500-699	6.50	Apr. 1, 1985
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1700-End	9.50	Apr. 1, 1984
25	14.00	Apr. 1, 1984
26 Parts:		
§§ 1.0-1.169	14.50	Apr. 1, 1984
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*§§ 1.301-1.400	7.50	Apr. 1, 1985
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30-39	9.00	Apr. 1, 1984
40-299	14.00	Apr. 1, 1984
300-499	9.50	Apr. 1, 1984
500-599	8.00	[1] Apr. 1, 1980
*600-End	4.75	Apr. 1, 1985
27 Parts:		
1-199	13.00	Apr. 1, 1984
200-End	12.00	Apr. 1, 1984
28	13.00	July 1, 1984
29 Parts:		
0-99	14.00	July 1, 1984
100-499	6.50	July 1, 1984
500-899	14.00	July 1, 1984
900-1899	7.50	July 1, 1984
1900-1910	15.00	July 1, 1984
1911-1919	5.50	July 1, 1984
1920-End	14.00	July 1, 1984
30 Parts:		
0-199	13.00	July 1, 1984
200-699	5.50	July 1, 1984
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31 Parts:		
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