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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB89

Common Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations: Sunflower Seed Crop Insurance Provisions (7 CFR 457.108), Coarse Grains Crop Insurance Provisions (7 CFR 457.113), Safflower Crop Insurance Provisions (7 CFR 457.125), Dry Pea Crop Insurance Provisions (7 CFR 457.140), Rice Crop Insurance Provisions (7 CFR 457.141), and Dry Bean Crop Insurance Provisions (7 CFR 457.150) to implement the quality loss adjustment procedures contained in section 10003 of the Farm Security and Rural Investment Act of 2002 (Public Law 107–171).

DATES: This rule is effective August 28, 2002. Written comments and opinions on this interim rule will be accepted until close of business October 29, 2002 and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through October 29, 2002.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133. Comments titled ''Common Crop Insurance Regulations, Various Crop Provisions'' may be sent via the Internet to: *DirectorPDD@rm.fcic.usda.gov*. A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., DST, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Timothy Hoffmann, Director, Product Development Division, Risk Management Agency, at the Kansas City, MO, address listed above, telephone (816) 926–3707.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563–0053 through February 28, 2005.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require 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.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any action taken by FCIC under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On May 13, 2002, the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) was enacted. Section 10003 of the 2002 Farm Bill requires that FCIC accept evidence of quality of agricultural commodities that are delivered to warehouse operators that are: (1) Licensed under the United States Warehouse Act; (2) licensed under State law and have entered into a storage agreement with the Commodity Credit Corporation; or (3)

not licensed under State law, but are in compliance with State law regarding warehouses, and have entered into a commodity storage agreement with the Commodity Credit Corporation. Currently, for the purposes of quality adjustment, all samples must be analyzed by a grain grader licensed under the authority of either, the United States Grain Standards Act or United States Agricultural Marketing Act, or the United States Warehouse Act.

Since the changes to the quality adjustment provisions for certain crops are required by section 10003 of the 2002 Farm Bill, and such changes need to be made by the August 31, 2002, contract change date to be effective for the 2003 crop year, it is impractical and contrary to the public interest to publish this rule for notice and comment prior to making this rule effective. However, comments are solicited for 60 days after the date of publication in the **Federal Register** and will be considered by FCIC before this rule is made final.

1. FCIC amends section 11(d)(3) of the Sunflower Seed Crop Insurance Provisions to add language to permit quality adjustment by the other statutorily authorized entities.

2. FCIC amends section 11(e)(3) of the Coarse Grains Crop Insurance Provisions to add language to permit quality adjustment by the other statutorily authorized entities.

3. FCIC amends section 11(d)(3) of the Safflower Crop Insurance Provisions to add language to permit quality adjustment by the other statutorily authorized entities.

4. FCIC amends section 12(e)(2) of the Dry Pea Crop Insurance Provisions to add language to permit quality adjustment by the other statutorily authorized entities.

5. FCIC amends section 12(d)(3) of the Rice Crop Insurance Provisions to add language to permit quality adjustment by the other statutorily authorized entities.

6. FCIC amends section 13(e)(3) of the Dry Bean Crop Insurance Provisions to add language to permit quality adjustment by the other statutorily authorized entities.

List of Subjects in 7 CFR Part 457

Crop insurance.

Interim Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457, Common Crop Insurance Regulations, for the 2003 and succeeding crop years, as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. Amend § 457.108 as follows:

a. Revise the introductory text to read as set forth below;

b. Amend section 11(d)(3)(ii) of the crop insurance provisions by removing ''and'' at the end thereof; and

c. Revise section 11(d)(3)(iii) and add section 11(d)(3)(iv) of the crop insurance provisions, to read as follows:

§ 457.108 Sunflower seed crop insurance provisions.

The sunflower seed crop insurance provisions for the 2003 and succeeding crop years are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

* * * * *

11. Settlement of Claim.

* * * * *

(d) * * *

(3) * * *

(iii) With regard to deficiencies in quality (except test weight, which may be determined by our loss adjustor), the samples are analyzed by:

(A) A grain grader licensed under the United States Grain Standards Act or the United States Warehouse Act;

(B) A grain grader licensed under State law and employed by a warehouse operator who has a storage agreement with the Commodity Credit Corporation; or

(C) A grain grader not licensed under State law, but who is employed by a warehouse operator who has a commodity storage agreement with the Commodity Credit Corporation and is in compliance with State law regarding warehouses; and

(iv) With regard to substances or conditions injurious to human or animal health, the samples are analyzed by a laboratory approved by us.

* * * * *

3. Amend § 457.113 as follows:

a. Revise the introductory text to read as set forth below;

b. Amend section 11(e)(3)(ii) of the crop insurance provisions by removing ''and'' at the end thereof; and

c. Revise section 11(e)(3)(iii) and add section 11(e)(3)(iv) of the crop insurance provisions, to read as follows:

§ 457.113 Coarse grains crop insurance provisions.

The coarse grains crop insurance provisions for the 2003 and succeeding crop years are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

* * * * *

11. Settlement of Claim.

* * * * *

(e) * * *

(3) * * *

(iii) With regard to deficiencies in quality (except test weight, which may be determined by our loss adjuster), the samples are analyzed by:

(A) A grain grader licensed under the United States Grain Standards Act or the United States Warehouse Act;

(B) A grain grader licensed under State law and employed by a warehouse operator who has a storage agreement with the Commodity Credit Corporation; or

(C) A grain grader not licensed under State law, but who is employed by a warehouse operator who has a commodity storage agreement with the Commodity Credit Corporation and is in compliance with State law regarding warehouses; and

(iv) With regard to substances or conditions injurious to human or animal health, the samples are analyzed by a laboratory approved by us.

* * * * *

4. Amend § 457.125 as follows:

a. Revise the introductory text to read as set forth below;

b. Amend section 11(d)(3)(iii) of the crop insurance provisions by removing ''and'' at the end thereof; and

c. Revise section 11(d)(3)(iv) and add section 11(d)(3)(v) of the crop insurance provisions, to read as follows:

§ 457.125 Safflower crop insurance provisions.

The safflower crop insurance provisions for the 2003 and succeeding crop years are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

* * * * *

11. Settlement of Claim.

* * * * *

(d) * * *

(3) * * *

(iv) With regard to deficiencies in quality (except test weight, which may be determined by our loss adjuster), the samples are analyzed by:

(A) A grader licensed under the United States Agricultural Marketing Act or the United States Warehouse Act;

(B) A grader licensed under State law and employed by a warehouse operator who has a storage agreement with the Commodity Credit Corporation; or

(C) A grader not licensed under State law, but who is employed by a warehouse operator who has a commodity storage agreement with the Commodity Credit Corporation and is in compliance with State law regarding warehouses; and

(v) With regard to substances or conditions injurious to human or animal health, the samples are analyzed by a laboratory approved by us.

* * * * *

5. Amend § 457.140 as follows:

a. Revise the introductory text to read as set forth below;

b. Amend section 12(e)(2)(iii) of the crop insurance provisions by removing ''and'' at the end thereof; and

c. Revise section 12(e)(2)(iv) and add section 12(e)(2)(v) of the crop insurance provisions, to read as follows:

§ 457.140 Dry pea crop insurance provisions.

The dry pea crop insurance provisions for the 2003 and succeeding crop years are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

* * * * *

12. Settlement of Claim.

* * * * *

(e) * * *

(2) * * *

(iv) With regard to deficiencies in quality (except test weight, which may be determined by our loss adjuster), the samples are analyzed by:

(A) A grader licensed under the United States Agricultural Marketing Act or the United States Warehouse Act;

(B) A grader licensed under State law and employed by a warehouse operator who has a storage agreement with the Commodity Credit Corporation; or

(C) A grader not licensed under State law, but who is employed by a warehouse operator who has a commodity storage agreement with the Commodity Credit Corporation and is in compliance with State law regarding warehouses; and

(v) With regard to substances or conditions injurious to human or animal health, the samples are analyzed by a laboratory approved by us.

* * * * *

6. Amend § 457.141 as follows:

a. Revise the introductory text to read as set forth below;

b. Amend section 12(d)(3)(iii) of the crop insurance provisions by removing ''and'' at the end thereof; and

c. Revise section 12(d)(3)(iv) and add section 12(d)(3)(v) of the crop insurance provisions, to read as follows:

§ 457.141 Rice crop insurance provisions.

The rice crop insurance provisions for the 2003 and succeeding crop years are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

* * * * *

12. Settlement of Claim.

* * * * *

(d) * * *

(3) * * *

(iv) With regard to deficiencies in quality (except test weight, which may be determined by our loss adjuster), the samples are analyzed by:

(A) A grader licensed under the United States Agricultural Marketing Act or the United States Warehouse Act;

(B) A grader licensed under State law and employed by a warehouse operator who has a storage agreement with the Commodity Credit Corporation; or

(C) A grader not licensed under State law, but who is employed by a warehouse operator who has a commodity storage agreement with the Commodity Credit Corporation and is in compliance with State law regarding warehouses; and

(v) With regard to substances or conditions injurious to human or animal health, the samples are analyzed by a laboratory approved by us.

* * * * *

7. Amend § 457.150 as follows:

a. Revise the introductory text to read as set forth below;

b. Amend section 13(e)(3)(iii) of the crop insurance provisions by removing ''and'' at the end thereof; and

c. Revise section 13(e)(3)(iv) and add section 13(e)(3)(v) of the crop insurance provisions, to read as follows:

§ 457.150 Dry bean crop insurance provisions.

The dry bean crop insurance provisions for the 2003 and succeeding crop years are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

* * * * *

13. Settlement of Claim.

* * * * *

(e) * * *

(3) * * *

(iv) With regard to deficiencies in quality (except test weight, which may be determined by our loss adjuster), the samples are analyzed by:

(A) A grader licensed under the United States Agricultural Marketing Act or the United States Warehouse Act;

(B) A grader licensed under State law and employed by a warehouse operator who has a storage agreement with the Commodity Credit Corporation; or

(C) A grader not licensed under State law, but who is employed by a warehouse operator who has a commodity storage agreement with the Commodity Credit Corporation and is in compliance with State law regarding warehouses; and

(v) With regard to substances or conditions injurious to human or animal health, the samples are analyzed by a laboratory approved by us.

* * * * *

Signed in Washington, DC on August 27, 2002.

Byron E. Anderson,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 02–22258 Filed 8–28–02; 8:58 am]

BILLING CODE 3410–08–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1720

RIN 2550–AA22

Safety and Soundness Regulation

AGENCY: Office of Federal Housing Enterprise Oversight, DHUD.

ACTION: Final rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is issuing a final rule to support increased transparency and public awareness of minimum supervisory standards adopted by OFHEO and applied in overseeing the safety and soundness of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises). The final rule's format reflects that used by other federal regulators. The rule delineates supervisory standards in a manner consistent with recent rulings by the United States Supreme Court affecting agency pronouncements. OFHEO will adopt and publish supervisory policy guidance as appendices to the rule as it deems appropriate to illuminate areas of particular interest or potential concern.

EFFECTIVE DATES: September 30, 2002.

FOR FURTHER INFORMATION CONTACT: David W. Roderer, Deputy General Counsel, or Marvin Shaw, Senior Counsel, at (202) 414–3775 (not a toll-free number), Office of General Counsel,

Office of Federal Housing Enterprise Oversight, 1700 G Street NW., Fourth Floor, Washington, DC 20552. The telephone number for the Telecommunications for the Deaf is: (800) 877–8339 (TTD *only*).

SUPPLEMENTARY INFORMATION: The Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Title XIII of Pub. L. No. 102–550 (the Act), empowers OFHEO to take any such action as the Director determines to be appropriate to ensure that the federally sponsored housing enterprises, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), are adequately capitalized and operating safely by, among other things, adopting supervisory policies and standards by regulation or other guidance or process.

On December 19, 2000, OFHEO issued Policy Guidance PG–00–001 setting forth minimum supervisory standards in eight broad areas of particular regulatory interest and potential concern and issued Policy Guidance PG–00–002, that addressed standards for non-mortgage liquidity.[1] One year later, a third policy guidance was adopted that specifically sets out the minimum safety and soundness standards for information systems and security.[2] That policy guidance, entitled ''Safety and Soundness Standards for Information,'' focused narrowly on safety and soundness concerns with the adequacy of the Enterprises' respective policies and procedures affecting the security of their information systems and integrity of such information, including borrower information maintained by the Enterprises.

The minimum standards set forth in OFHEO's policy guidances are designed to identify key safety and soundness concerns regarding operation and management of an Enterprise, and to ensure that the conduct and practices of the Enterprises reasonably avoid the emergence of problems that might entail serious risks. The minimum standards also reflect the need for internal policies and procedures in particular areas that, if not appropriately addressed by an Enterprise, may warrant supervisory action by OFHEO in order to reduce risks of loss and corresponding capital impairment. The minimum standards set out in such guidances are intended to affect these purposes without dictating how the Enterprises must be operated and managed.

On June 21, 2002, OFHEO published a notice in the **Federal Register** proposing a rule that would provide the regulatory framework for the adoption and publication of such policy guidance.[3] The format of the proposed regulation, as a formal agency pronouncement delineating the parameters of the supervisory standards applicable to the Enterprise, mirrors that used by the Office of Comptroller of the Currency (OCC) in promulgating safety and soundness standards for national banks[4] pursuant to Section 39 of the Federal Deposit Insurance Act.[5] The OCC used a similar format when it adopted specific supervisory standards applicable to bank information systems.[6]

OFHEO received comments from Freddie Mac, Fannie Mae and the Mortgage Bankers Association of America (MBAA). The commenters generally supported the proposal. Freddie Mac agreed with the purpose of the rule of improving transparency and public awareness of supervisory standards applicable to the Enterprises. In particular, Freddie Mac acknowledged the issuance of guidance is the most effective way to integrate safety and soundness objectives into an ever-changing business environment. Similarly, Fannie Mae supported the purpose of the rule: to enhance transparency and public awareness of these minimum supervisory standards. MBAA noted that the proposal and the specific authorities set forth by OFHEO appear to be reasonable and within the bounds of prudent regulatory practice.

OFHEO analyzed the comments and suggestions for improvement of the proposed rule. Freddie Mac recommended section § 1720.2 be modified with respect to the Director's authority to include the phrase ''to the extent such actions are authorized by the Act.'' OFHEO agrees with Freddie Mac that the Director may only exercise such authority as is specifically granted, or by implication is necessary to carry out specific grants of authority, in legislation enacted by Congress. Accordingly, OFHEO believes that it is unnecessary to amend the regulatory text in section § 1720.2 to state this principle.

Fannie Mae questioned the need for what they believe are ''duplicative reassertions of authority'' since OFHEO has asserted its authority in the guidances and in 12 CFR Part 1777. Fannie Mae also requested confirmation of its belief that the rulemaking does not convert OFHEO's policy guidances into rules subject to the Administrative Procedure Act (APA). Finally, Fannie Mae requested that OFHEO solicit input from the Enterprises whenever it develops any supervisory policy guidance.

OFHEO notes that its assertion of statutory authority in this rulemaking as well as in the guidances and Part 1777 reflect common practice among federal agencies in specifying their authority whenever they publish agency rules or other pronouncements. This practice cites the authority of the agency to those coming into contact with an agency pronouncement for the first time. OFHEO agrees that the safety and soundness rule set forth in final form here does not ''convert'' existing or future guidance into rules subject to the APA. Indeed, this would be contrary to OFHEO's intent and reduce its use of this important and flexible supervisory device.

As explained in the NPR, the final regulation and appended guidances are intended to facilitate the public awareness and enforceability of such standards as official agency pronouncements in a manner consistent with recent United States Supreme Court's rulings.[7]

Nothing in the OFHEO Policy Guidances limits the authority of OFHEO to otherwise address unsafe or unsound conditions or practices, or violations of applicable laws, regulations or supervisory orders, as detailed in section § 1720.1(b).

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

The regulation is not classified as a significant rule under Executive Order 12866 because it will not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant

[1] OFHEO Policy Guidance PG–00–001, Minimum Safety and Soundness Requirements (Dec. 19, 2000) and Policy Guidance PG–00–002, Non-mortgage Liquidity Investments (December 19, 2000) (available on OFHEO's web site at *http://www.ofheo.gov*).

[2] OFHEO Policy Guidance PG–01–001, Safety and Soundness Standards for Information (Dec. 19, 2001) (available on OFHEO's web site at *http://www.ofheo.gov*).

[3] 67 FR 42200 (June 21, 2002).

[4] For the OCC, these regulations appear at 12 CFR Part 30, Appendix A: ''Interagency Guidelines Establishing Standards for Safety and Soundness''; *see also*, for the Board of Governors of the Federal Reserve System at 12 CFR Part 263; and for the Federal Deposit Insurance Corporation at 12 CFR 308, subpart R; and for the Office of Thrift Supervision at 12 CFR Part 570.

[5] 12 U.S.C. 1381p–1.

[6] *See*, Appendix B of 12 CFR Part 30.

[7] *See United States* v. *Mead Corp.*, 533 U.S. 218 (2001), and *Christensen* v. *Harris County*, 529 U.S. 576 (2000).

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 foreign markets. Accordingly, no regulatory impact assessment is required and this regulation need not be submitted to the Office of Management and Budget for formal review.

Unfunded Mandates Reform Act of 1995

This rule does not include a Federal mandate that could result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. As a result, the rule does not warrant the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation only affects the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

This regulatory action contains no information collection requirement that would require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

List of Subjects in 12 CFR Part 1720

Administrative practice and procedure, Mortgages.

Accordingly, for the reasons set out in the preamble, the Office of Federal Housing Enterprise Oversight is adding part 1720 to subchapter C of 12 CFR chapter XVII to read as follows:

PART 1720—SAFETY AND SOUNDNESS

Sec.
1720.1 Authority.
1720.2 Safety and soundness standards.

Appendices

Appendix A to Part 1720—Policy Guidance; Minimum Safety and Soundness Requirements
Appendix B to Part 1720—Policy Guidance; Non-Mortgage Liquidity Investments
Appendix C to Part 1720—Policy Guidance; Safety and Soundness Standards for Information

Authority: 12 U.S.C. 4513(a), 4513(b)(1), 4513(b)(5), 4517(a), 4521(a)(2) through (3), 4631, 4632, and 4636.

§ 1720.1 Authority.

(a) *Authority.* This part is issued by the Office of Federal Housing Enterprise Oversight (OFHEO) pursuant to sections 1313(a), 1313(b)(1), and 1313(b)(5) of the Federal Housing Enterprise Financial Safety and Soundness Act (Act) (12 U.S.C. 4513(a), 4513(b)(1), and 4513(b)(5)). These provisions of the Act authorize OFHEO to take any action deemed appropriate by the Director of OFHEO to ensure that the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (the Enterprises) are operated in a safe and sound manner, including by adopting supervisory policies and standards by regulation, guidance, or other process.

(b) *Preservation of existing authority.* No action by OFHEO undertaken with reference to a policy guidance or this regulation will in any way limit the authority of the Director otherwise to address unsafe or unsound conditions or practices, or other violations of law, rule or regulation. Action with reference to a policy guidance or this regulation may be taken separate from, in conjunction with, or in addition to any other supervisory response, enforcement action, or agency-imposed requirements deemed appropriate by OFHEO. Nothing in this regulation or any guidance issued by OFHEO limits the authority of the Director pursuant to section 1313 of the Act (12 U.S.C. 4513) or any other provision of law, rule or regulation applicable to the Enterprises.

§ 1720.2 Safety and soundness standards.

Policy guidances as may be adopted from time to time by OFHEO, addressing safety and soundness standards, shall apply to the Enterprises. If OFHEO determines that an Enterprise does not meet a requirement set out in such policy guidance, it may require corrective or remedial actions by the Enterprise, and take such enforcement action as the Director deems to be appropriate.

Appendix A to Part 1720—Policy Guidance; Minimum Safety and Soundness Requirements

A—Background and Introduction

I. Background
II. Introduction

B—Operational and Managerial Requirements

I. Asset underwriting and credit quality.
II. Balance sheet growth and management.
III. Market risk.
IV. Information technology.
V. Internal controls.
VI. Audits.
VII. Information reporting and documentation.
VIII. Board and management responsibilities and function.
IX. Format of policies and procedures.

C—Compliance Plans

I. Notice; submission and review of compliance plan.
II. Failure to submit acceptable plan or to comply with plan.

A—Background and Introduction

I. Background. The Federal Housing Enterprises Safety and Soundness Act of 1992, Title XIII of Pub. L. No. 102–550 (the Act) empowers OFHEO to take any such action as the Director determines to be appropriate to ensure that the federally sponsored housing enterprises, Fannie Mae and Freddie Mac, are, among other things, adequately capitalized and operating safely, including by adopting supervisory policies and standards by regulation or other guidance or process.

i. OFHEO herein sets forth the minimum supervisory requirements used by the agency in reviewing the ensuring, the adequacy of policies and procedures of the Enterprises in the areas of: (1) Asset underwriting and credit quality; (2) balance sheet growth; (3) market risks; (4) information technology; (5) internal controls; (6) audits; (7) information reporting and documentation; and (8) board and management responsibilities and functions. If the agency finds that an Enterprise fails to meet any requirement or standard set forth in this pronouncement, the Director may, among other things, require the Enterprise to submit to the agency and implement an adequate plan to achieve timely compliance with the requirement or standard. If the Enterprise fails to submit such an adequate plan within the time specified by the agency or fails in any material respect to implement the plan, the agency may take additional supervisory action. The Director may at any time prescribe such supervisory actions as deemed appropriate to correct conditions resulting from an unsafe or unsound practice or condition or deficiency in complying with regulatory requirements or standards including, but not limited to, issuance of a notice of charges or order, imposition of civil money penalties, or other remedial actions or sanctions as determined by the Director.

ii. The minimum supervisory requirements and standards identify key safety and

soundness concerns regarding operation and management of an Enterprise, and ensure that action is taken to avoid the emergence of problems that might entail serious risks to an Enterprise. The minimum supervisory requirements of the Policy Guidance also reflect the need for internal policies and procedures in particular areas that, if not appropriately addressed by the Enterprises, may warrant action by OFHEO in order to reduce risks of loss and possible capital impairment. The proposed minimum requirements set forth herein are intended to effect these purposes without dictating how the Enterprises must be operated and managed; moreover, the Policy Guidance does not set out detailed operational and managerial procedures that an Enterprise must have in place. The Policy Guidance is intended to identify the ends that proper operational and management policies and procedures are to achieve, while leaving the means to be devised by each Enterprise as it designs and implements its own policies and procedures. Where OFHEO does specify particular requirements, each Enterprise's management is left with substantial flexibility to fashion and implement them.

iii. The Policy Guidance is not intended to effect a change in OFHEO's policies; the announced minimum requirements reflect the basic underlying criteria OFHEO uses to assess the operations and managerial quality of an Enterprise. OFHEO will determine compliance with the requirements and related standards through examinations of the Enterprises, as well as off-site surveillance means and other interchanges with each Enterprise.

iv. OFHEO routinely undertakes to evaluate an Enterprise's overall policies, in order to determine whether such policies are safe and sound in principle and in practice. OFHEO also evaluates whether procedures are in place to ensure that an Enterprise's overall policies as adopted by the Enterprise's board of directors and management are, in fact, applied in the normal course of business. As reflected in the Policy Guidance, the Enterprises are, at a minimum, expected to adopt appropriate policies and internal guidelines, and to put in place procedures to ensure they are followed as a matter of routine.

v. Nothing in the Policy Guidance in any way limits the authority of OFHEO to otherwise address unsafe or unsound conditions or practices, or violations of applicable law, regulation or supervisory order. Action referencing the Policy Guidance may be taken separate from, in conjunction with or in addition to any other enforcement action available to OFHEO. Compliance with the Policy Guidance in general would not preclude a finding by the agency that an Enterprise is otherwise engaged in a specific unsafe or unsound practice or is in an unsafe or unsound condition, or requiring corrective or remedial action with regard to such practice or condition. That is, supervisory action is not precluded against an Enterprise that has not been cited for a deficiency under the Policy Guidance. Conversely, an Enterprise's failure to comply with one of the supervisory requirements set forth in the Policy Guidance may not warrant a formal supervisory response from OFHEO, if the agency determines the matter may be otherwise addressed in a satisfactory manner. For example, OFHEO may require timely submission of a plan to achieve compliance with the particular requirement or standard without taking any other enforcement action.

II. Introduction. i. *Authority, purpose, and scope.*

a. Authority. This Policy Guidance is issued by the Office of Federal Housing Enterprise Oversight (OFHEO) pursuant to sections 1313(a), 1313(b)(1), 1313(b)(5) and 1371 of the Federal Housing Enterprise Safety and Soundness Act (Act) (12 U.S.C. 4513(a), 4513(b)(1), 4513(b)(5) and 4631). These provisions of the Act authorize OFHEO to take any action deemed appropriate by the Director of OFHEO to ensure that the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (the Enterprises) are operated in a safe and sound manner, including by adopting supervisory policies and standards by regulation, guidance, or other process.

b. Purpose and scope. This Policy Guidance sets out certain minimum safety and soundness requirements for the business and operations of the Enterprises, and reiterates agency policies requiring the Enterprises to establish and implement policies and procedures that are sufficient to effectuate compliance with supervisory standards. If OFHEO determines that an Enterprise does not meet the requirements set forth herein, the Director may require the Enterprise to submit and carry out a plan to achieve compliance, or may take other corrective and remedial actions. The requirements enumerated herein are supervisory minimums. In order to satisfy an Enterprise's overarching obligation under the Act to conduct is operations in a safe and sound manner, it may be necessary and appropriate for an Enterprise to take additional measures in these or other areas, as directed by OFHEO through regulation, guidance, order or otherwise as part of the supervisory process.

ii. *Preservation of existing authority.* Neither this Policy Guidance nor any action by OFHEO to enforce compliance of an Enterprise therewith in any way limits the authority of the Director otherwise to address unsafe or unsound conditions or practices, or other violations of law or other regulation. Action under this Policy Guidance may be taken separate from, in conjunction with, or in addition to any other enforcement action deemed appropriate by OFHEO. Nothing in this Policy Guidance or related guidances limits the authority of the Director pursuant to section 1313 of the Act (12 U.S.C. 4513) or any other provision of law, rule or regulation applicable to the Enterprises.

iii. *Definitions.* For purposes of this Policy Guidance, except as modified therein or unless the context otherwise requires, the terms used have the same meaning as set forth in section 1303 of the Act (12 U.S.C. 4502).

B—Operational and Managerial Requirements

I. Asset underwriting and credit quality. An Enterprise should establish and implement policies and procedures to adequately assess credit risks before they are assumed, and monitor such risks subsequently to ensure that they conform to the Enterprise's credit risk standards on an individual and an aggregate basis. The Enterprise should:

i. For loans purchased and loans collateralizing securities guaranteed by the Enterprise, adopt and implement prudent underwriting standards and procedures commensurate with the type of loan or loans and the markets in which the loan or loans were made that include consideration of the borrower's and any guarantor's financial condition and ability to repay as well as the type and value of any collateral or credit enhancement;

ii. To the extent the Enterprise's assets are serviced or administered by other entities or are covered by mortgage insurance or other credit enhancements or arrangements, the Enterprise's policies and procedures should recognize the consequences and implications of such contractual arrangements for the Enterprise's credit risk;

iii. Establish and implement policies and procedures to address declining credit quality and to require appropriate corrective action; to establish sufficient reserves; and to deal with defaulted assets so as to minimize losses;

iv. Establish and implement policies and procedures to select and price credit risk to ensure that the Enterprise is appropriately compensated commensurate with the credit risk it assumes and its statutory obligations;

v. Establish and implement policies and procedures that address the prudential selection, management and handling of counterparty credit exposure that arises from engaging in hedging activities and the use derivative instruments; and

vi. Establish and implement policies and procedures to identify, monitor and evaluate its credit exposures on an aggregate basis so as to assess the implications and consequences of matters such as concentration exposure (including geographic as well as product concentrations), to identify and evaluate credit risk trends effectively, and to maintain and revise appropriately its systems and procedures for underwriting, servicing, and monitoring of such exposures and changes to those exposures.

II. Balance sheet growth and management. An Enterprise's balance sheet growth should be prudent and consider:

i. The source, volatility, and use of funds that support balance sheet growth;

ii. Any changes in credit risk or interest rate risk resulting from balance sheet growth;

iii. The effect of balance sheet growth on the Enterprise's capital adequacy; and

iv. The appropriate policies and procedures needed to manage changes in risk that may occur as a result of balance sheet growth.

III. Market risk. An Enterprise should establish and implement policies and procedures that allow for the effective identification, measurement, monitoring, and

management of market risk. The Enterprise should:

i. Establish and implement policies and procedures sufficient to quantify and monitor the interest rate risk of the Enterprise effectively and to model the effect of differing interest rate scenarios on the Enterprise's financial condition and operations;

ii. Develop risk management strategies that respond appropriately to changes in interest rates;

iii. Establish and implement policies and procedures sufficient to quantify and monitor the Enterprise's liquidity effectively, and to identify and anticipate various market environments and their effects on the Enterprises' liquidity; and

iv. Establish and maintain an effective contingency plan for liquidity under varying scenarios.

IV. Information technology. An Enterprise should establish and implement policies and procedures to ensure that its computing resources, proprietary and nonpublic information and data are:

i. Protected from access by unauthorized users, and otherwise protected by appropriate security measures;

ii. Reliable, accurate and available at all times as needed for its business operations, including an ability to effect timely recovery and resume operations after a reasonably foreseeable adverse event; and

iii. Designed to ensure adequate support of business operations.

V. Internal controls. An Enterprise should maintain and implement internal controls appropriate to the nature, scope and risk of its business activities that, at a minimum, provide for:

i. An organizational structure and assignment of responsibility for management, employees, consultants and contractors, that provide for accountability and controls, including adherence to policies and procedures;

ii. A control framework commensurate with the Enterprise's risks;

iii. Policies and procedures adequate to safeguard and to manage assets; and

iv. Compliance with applicable laws, regulations and policies.

VI. Audits. An Enterprise should establish and implement internal and external audit programs appropriate to the nature and scope of its business activities that, at minimum, provide for:

i. Adequate monitoring of internal controls through an audit function appropriate to the Enterprise's size, structure and scope of operations;

ii. Independence of the audit function;

iii. Qualified professionals and management for the conduct and review of audit functions;

iv. Adequate testing and review of audited areas together with adequate documentation of findings and of any recommendations and corrective actions; and

v. Verification and review of measures and actions undertaken to address identified material weaknesses.

VII. Information reporting and documentation. An Enterprise should establish and implement policies and procedures for generating and retaining reports and documents that:

i. Enable the Enterprise's board of directors (including appropriate committees) to make informed decisions and to exercise its oversight function, by providing all such relevant information of an appropriate level of detail as necessary;

ii. Enable the Enterprise's managers to make informed business decisions and to assess risks for all aspects of the Enterprise's business on an ongoing basis, by providing sufficient relevant information of an appropriate level of detail as necessary;

iii. Ensure decision-makers have appropriate and necessary information about particular transactions and business operations;

iv. Enable the Enterprise to administer and supervise all assets, liabilities, commitments and other financial obligations appropriately;

v. Enable the Enterprise to enforce legal claims against borrowers, counterparties and other obligors; and

vi. Ensure timely and complete submissions of reports of financial condition and operations, as well as annual and other periodic reports and special reports to OFHEO whenever requested or required by OFHEO.

VIII. Board and management responsibilities and function. An Enterprise's board of directors shall ensure that the board (including appropriate committees) works with executive management to establish the Enterprise's strategies and goals in an informed manner, and that the Enterprise's executive managers and other managers, as appropriate, implement such strategies, by ensuring at a minimum that:

i. The board (including appropriate committees) oversees the development of the Enterprise's strategies in key areas and exercises oversight necessary to ensure that management sets policies and controls to implement such strategies effectively;

ii. The board (including appropriate committees) hires qualified executive management, and exercises oversight to hold management accountable for meeting the Enterprise's goals and objectives;

iii. The board (including appropriate committees) is provided with accurate information about the operations and financial condition of the Enterprise in a timely fashion, and sufficient to enable the board to effect its oversight duties and responsibilities;

iv. Management of the Enterprise sets policies and controls to ensure the Enterprise's strategies are implemented effectively, and that the Enterprise's organization structure and assignment of responsibilities provide clear accountability and controls; and

v. Management of the Enterprise establishes and maintains an effective risk management framework, including review of such framework to monitor its effectiveness and taking appropriate action to correct any weaknesses.

IX. Format of policies and procedures. i. Generally, the policies of an Enterprise contemplated by this Policy Guidance should be in writing and in such form and detail as appropriate in light of their intended purpose, nature, and potential consequences for the operations and financial condition of the Enterprise, and approved by the board of directors (including appropriate committees) or such responsible officer or officers as designated by the board.

ii. The policies and procedures of an Enterprise contemplated by this Policy Guidance should be provided to OFHEO at such time and in such format as OFHEO directs.

C—Compliance Plans

I. Notice; submission and review of compliance plans. i. *Determination.* The Director of OFHEO may, based upon a report of examination, or other supervisory information however acquired, determine that an Enterprise has failed or is likely to fail to satisfy the minimum supervisory requirements or standards set forth in part B of this appendix.

ii. *Request for compliance plan.* If the Director determines pursuant to paragraph C.I.i of thiis appendix that an Enterprise has failed or is likely to fail to satisfy a supervisory requirement or standard, OFHEO may require the submission of a written compliance plan.

iii. *Schedule for filing compliance plan.* An Enterprise may be required to file a written compliance plan with OFHEO within thirty days of receiving a written request for a compliance plan pursuant to paragraph C.I.ii of this appendix.

iv. *Contents of plan.* A required compliance plan should include, subject to additional direction by OFHEO, a detailed description of the steps the Enterprise will take to correct a deficiency and any condition resulting therefrom and the time within which such steps will be undertaken and fully implemented.

v. *Review of compliance plans.* If the compliance plan submitted under this section is deemed to be inadequate or incomplete, OFHEO may provide written notice of such inadequacy or deficiencies thereof to the Enterprise OFHEO or seek additional information from the Enterprise regarding the plan.

vi. *Amendment of compliance plan.* An Enterprise that has filed a required compliance plan to which no objection has been raised by OFHEO may, after prior written notice to and approval by the Director, amend the plan to reflect changes in circumstance, policies and procedures.

II. Failure to submit acceptable plan or to comply with plan. If an Enterprise does not submit an adequate and complete plan as required by the agency within the time specified by OFHEO or does not implement such an adequate and complete plan, the Director may require the Enterprise to correct any deficiency and may require additional corrective or remedial actions by the Enterprise as deemed to be appropriate pursuant to the Act, including sections 1371 (12 U.S.C. 4631), 1372 (12 U.S.C. 4632), and 1376 (12 U.S.C. 4636).

Appendix B to Part 1720—Policy Guidance; Non-Mortgage Liquidity Investments

A—Purpose
B—Activities Covered
C—Standards for Non-mortgage Liquidity Investment Activities

D—Disclosure of Non-mortgage Liquidity Investment Activities
E—Summary

A—Purpose

1. Fannie Mae and Freddie Mac (the Enterprises) were chartered by Congress as government-sponsored enterprises with public missions. They perform an important role in the United States mortgage market by gathering funds and purchasing mortgages from mortgage originators and guaranteeing mortgage-backed securities. In chartering the Enterprises, Congress charged the Enterprises with: (1) providing stability to mortgage markets; (2) responding to the changing capital markets; (3) assisting the secondary markets including the support of these markets for affordable housing; and (4) promoting access to credit throughout the country by increasing liquidity and improving distribution of investment capital for residential mortgage finance. These functions require the Enterprises, as principals in the secondary mortgage market, to serve as bedrock in providing liquidity to the U.S. housing finance system.

2. For the Enterprises effectively to perform their public purposes, they must be financially sound and liquid. As the Enterprises' financial safety and soundness regulator, OFHEO conducts its regulatory programs to ensure these companies adhere to safety and soundness standards. In addition, OFHEO interprets this to include heightening the positive effect of market discipline on the Enterprises by encouraging quality disclosures, appropriate accounting standards, and state-of-the-art risk management further strengthens their safety and soundness. More specifically, OFHEO conducts comprehensive safety and soundness examinations and requires the Enterprises to adhere to regulatory capital requirements. In conducting its regulatory programs, OFHEO applies a series of safety and soundness standards to assess the Enterprises' liquidity management, including their investments in non-mortgage liquidity assets. It is appropriate to issue initial guidance that addresses the safety and soundness standards OFHEO uses to evaluate Enterprise investment activities in non-mortgage liquidity assets.

3. Further, it should be noted that the Secretary of HUD, who has general regulatory power over the Enterprises and who is required to make such rules and regulations as necessary to ensure that the purposes of the GSE's respective Charter Acts are accomplished, has issued an Advanced Notice of Proposed Rulemaking on possible substantive and/or procedural rules governing the GSEs' non-mortgage investment activities. Accordingly, the GSEs may be subject to regulations in this area through future HUD actions, in addition to this initial guidance.

B—Activities Covered

1. The Enterprises must maintain sufficient liquidity to meet both known and unexpected payment demands on borrowings and mortgage securities, for operations and to purchase mortgage assets. Liquidity management is the process by which the Enterprises manage the use and availability of various funding sources to meet current and future needs. Liquidity must be closely managed on a daily basis.

2. The Enterprises manage liquidity through three primary channels: securitizations, issuance of debt and conversion of liquid assets into cash. It is through careful management within and among the three channels, that the Enterprises can effectively meet demands and remain safe and sound under all market conditions. This Guidance specifically addresses ''non-mortgage liquidity investments'' which are conducted within the liquidity channel whereby the Enterprises are able to convert their own assets into cash.

3. There are various types of investments that may be appropriate for non-mortgage liquidity holdings. Appropriate non-mortgage liquidity investments are characterized by both creditworthiness and low price volatility. Even though an investment may be creditworthy, if the holding is subject to undue price volatility (e.g. common stock), the investment is inappropriate for inclusion in the non-mortgage liquidity portfolio since the investment may not be readily converted into cash without substantial loss.

4. For the purposes of this Guidance, the types of assets listed below are generally considered to be appropriate non-mortgage liquidity investments. This list is subject to revision over time as new asset types are introduced and/or market activities change. The presence of an asset on the list does not mean that OFHEO will necessarily consider any and all Enterprise investments in these assets to be safe and sound, especially if they fail to meet appropriate credit quality, maturity and diversification objectives:

a. Debt issued by the United States Treasury,

b. Debt issued by U.S. Government Agencies,

c. General obligation debt issued by states and municipal authorities,

d. Revenue obligations issued by states and municipal authorities,

e. Corporate debt instruments,

f. Money market instruments,

g. Non-mortgage asset-backed securities, and

h. Reverse repurchase agreements.

5. This Guidance does not address investments in mortgage-backed securities, mortgage revenue bonds, or other investments secured by housing (including commercial mortgage-backed securities with a significant housing component) since these assets are not principally held for liquidity purposes. Also, upon implementation of FAS 133, this Guidance is not intended to address the use of derivative instruments. For activities not covered in this Guidance on non-mortgage liquidity investments, there should be no inferences drawn about OFHEO's views.

C—Standards for Non-Mortgage Liquidity Investment Activities

To ensure there are sufficient funds available to the mortgage market, the Enterprise must actively manage liquidity across all three channels. OFHEO assesses the safety and soundness of non-mortgage liquidity investment activities against five criteria. The five criteria and details about each of the criteria are:

- Prudent investment policies and procedures that guide the Enterprise's process;
- Quality management information that ensures timely performance measures and governance data;
- Safe & sound investment holdings and investment culture;
- Quality controls and personnel administering and governing the process; and
- Independent testing of the process to assure compliance.

1. Prudent Investment Policies and Procedures That Guide the Enterprise's Process

a. The Enterprise must have a comprehensive written investment policy that clearly expresses the goals for the non-mortgage liquidity investment activities. The Board of Directors and management must evaluate the effectiveness of non-mortgage liquidity investments in meeting the goals set out in the policy; and management must evaluate activities against the procedures and limitations in the policy. At a minimum, the policy should cover:

i. The purpose of the non-mortgage liquidity investment holdings;

ii. The institutional goal(s) for the non-mortgage liquidity investment holdings;

iii. The authorized instruments and activities;

iv. The internal control standards;

v. The limits structure;

vi. The performance standards and measures; and

vii. The reporting requirements.

b. The policy should clearly document the purpose for non-mortgage liquidity investment holdings. Management should install a series of procedures and controls that produce behaviors and performance that are consistent with the defined purpose for the non-mortgage liquidity investment activities.

c. The policy should establish the primary goals for the non-mortgage liquidity investment activities. For an Enterprise, some primary goals should be to augment liquidity and to generate a rate of return that is reasonable in light of the purpose of such investments. The emphasis placed on individual goals may vary based upon institutional differences. However, non-mortgage liquidity investments made with a goal of maximizing earnings or maximizing arbitrage opportunities would be inconsistent with this Guidance for the maintenance of an Enterprise's liquidity portfolio.

d. The policy should clearly define the authorized investment vehicles and establish guidelines for the introduction of new types of investment vehicles.

e. The Enterprise's procedures should include a framework of controls that provide an appropriate separation of duties and responsibilities. There should be responsibility assigned for an independent review of non-mortgage liquidity investments by a designated unit, such as audit or an independent risk oversight group.

f. The Enterprise should adopt a limit structure to promote diversification in the non-mortgage liquidity investment portfolio and emphasizes strategies for risk mitigation. Additionally, there should be limits for the aggregate size of the non-mortgage liquidity investment portfolio.

g. The Enterprise should adopt measures to evaluate performance against the policy and its objectives.

h. The Enterprise should adopt internal reporting requirements that quantify performance, document exceptions, and serve as a basis for communicating information about activities involving non-mortgage liquidity assets.

i. The Enterprise should periodically evaluate the adequacy and content of its public disclosure for non-mortgage investment liquidity activities.

2. Quality Management Information That Ensures Timely Performance Measures and Governance Data

a. The Enterprise must maintain systems that adequately identify, measure and report the nature and level of exposure associated with their non-mortgage liquidity investments. Management must remain appropriately informed about the activity in non-mortgage liquidity investments. Also, the Board of Directors should periodically be provided a summary of non-mortgage liquidity investment activities. At a minimum, management's reports to the Board should:

i. Summarize non-mortgage investment activity since the last report;

ii. Identify and explain any material changes or trends in the non-mortgage liquidity investment portfolio risk and returns; and

iii. Report and explain exceptions to the policy or risk guidelines for liquidity investments.

b. Meaningful changes in portfolio volume and spreads from period to period should be identified and explained to the Board in terms of why they occurred (*e.g.*, changes in portfolio composition, changes in funding costs, *etc.*). In overseeing the day-to-day management of non-mortgage liquidity investment activities, management should consider the discrete risks associated with the non-mortgage liquidity investment portfolio as well as the exposure of this portfolio within the context of risks across the entire Enterprise. This includes assessing the non-mortgage liquidity investment portfolio's sensitivity to changes in interest rates, expressed in terms of net interest income sensitivity and portfolio value sensitivity.

3. Safe and Sound Investment Holdings and Investment Culture

a. The Enterprise should implement and enforce policies and/or procedures for non-mortgage liquidity investments. Management should establish limits and procedures in a manner that is consistent with the Board's sanctioned goals and risk appetite. Certain risk-limits for non-mortgage liquidity investments may be expressed in terms of how they affect the Enterprise's overall risk-profile, such as those pertaining to interest-rate sensitivity. Other risk limits may be more appropriately expressed in terms of individual portfolios and instruments. In addition, limits restricting the size-range and scope of the non-mortgage liquidity investment activities should be established.

b. The limits and procedures should delineate the acceptable investment instruments, acceptable markets, acceptable counterparties, along with unacceptable investment or portfolio activities. The Enterprise should maintain sufficient documentation to demonstrate due diligence in adhering to policies, procedures, limits and guidelines.

c. At a minimum, limits should be established and reviewed annually, for:

i. Credit threshold guidelines: Credit quality is a compelling factor for liquidity investments. Since liquidity investments should be able to be readily converted into cash without substantial exposure to losses, investments should be insulated from price vulnerabilities that are associated with creditworthiness. The most effective means of insulating against price exposure from credit quality concerns is to invest in high-quality instruments and the debt obligations of high-quality issuers. The Enterprise should establish thresholds identifying the minimum credit standards of any security eligible for purchase. Where these standards involve credit ratings, the ratings should come from a nationally recognized rating organization. Procedures should be included that determine the steps to be taken by management if an instrument's credit rating falls below the minimum threshold before maturity.

ii. Maturity guidelines: Because the maturity of an investment significantly affects its exposure to credit risk and price volatility, longer maturity instruments have limited suitability as liquidity investments. The Enterprise should establish the maximum maturity allowable for non-mortgage liquidity investments. It would be appropriate to have different maturity limits for certain types of instruments. For example, management may wish to establish shorter maturity limits for fixed-coupon instruments than for adjustable-rate securities. Management may have different maturity limits for bullet securities and amortizing structures. It would be appropriate to establish a maturity matrix based upon an instrument's credit rating at the time of purchase.

iii. Diversification and concentration guidelines: Credit concentrations can increase credit risk. Accordingly, the Enterprise should establish guidelines that limit investments in the securities of any single issuer. Such limits may be established as a percentage limit (*e.g.*, as a percentage of capital) or as an absolute dollar amount. To enhance portfolio liquidity, there should also be a limit on the percentage of any particular issue held by the Enterprise.

4. Quality Controls and Personnel Administering and Governing the Process

a. The Enterprise should maintain a comprehensive set of controls to enforce the appropriate separation of duties and responsibilities. These controls should translate into clear procedures for routine operations. At a minimum, the internal control program for non-mortgage liquidity investment activities should include procedures for the following: portfolio valuation, personnel, settlement, physical control and documentation, conflict of interest, and accounting.

i. Portfolio valuation procedures. Portfolio valuation procedures should require pricing that is independent of the investment portfolio managers. Pricing securities provides an indication of the market depth and liquidity for individual instruments, and is an important process for providing data to the risk management function, particularly within a framework of estimating market value sensitivity. Pricing is particularly important for securities that are classified as ''available-for-sale'' for accounting purposes.

ii. Personnel guidelines. Personnel guidelines should require competent and experienced staff be responsible for conducting transactions and managing the non-mortgage investment portfolio. There should be clear guidance regarding the roles and responsibilities of individuals involved with the non-mortgage liquidity portfolio.

iii. Settlement practices. Procedures should cover standard settlement practices for the various types of non-mortgage liquidity investments in the Enterprise's portfolio. Inadequate understanding of standard settlement practices, coupled with poor internal controls, could result in unnecessary costs or losses.

iv. Control and documentation. Procedures covering control and documentation should be comprehensive and consistent with the evolving better practices in the marketplace. The procedures should include, for example, standards for: processing and controlling purchased instruments, safeguarding investment documentation and reviewing trade tickets and confirmations.

v. Conflict of interest. Conflict of interest guidelines should govern all Enterprise personnel authorized to purchase or sell non-mortgage liquidity investments. These guidelines should ensure that all directors, officers and employees act in the Enterprise's best interest. Conflict of interest guidelines should address employee relationships with authorized broker/dealers. Guidelines should also address personnel accepting gifts and travel expenses from broker/dealers.

vi. Accounting. Accounting practices should be evaluated to determine the level of compliance with GAAP standards.

5. Independent Testing and Review of the Process to Assure Compliance

a. An independent review of non-mortgage liquidity investment activities should be conducted periodically to ensure:

i. The accuracy and integrity of information provided to the Board, management and other oversight bodies;

ii. The adherence to policy, procedures, limits and guidelines;

iii. The timeliness, accuracy and usefulness of non-mortgage investment reports;

iv. The adequacy of personnel resources and capabilities; and

v. The non-mortgage liquidity investment activities remain appropriate in the context of the marketplace and the external environment.

b. This review may be conducted by a risk oversight unit or internal audit department, or any party that is independent of the routine risk-taking decisions and should be commensurate with the level of review of other primary Enterprise activities. Independent review findings for non-mortgage liquidity investments should be reported to the Board directly or through one of its committees. The Board should consider the independent review when reaffirming policies, and should address any issues raised.

D—Disclosure of Non-Mortgage Liquidity Investment Activities

1. Sound risk management practices include thorough disclosures about the Enterprise's risks and further regulators' efforts to increase financial transparency for regulated financial companies. Quality disclosures about risks and risk management can be an effective deterrent to excessive risk-taking. Three essential elements needed to promote market discipline for non-mortgage liquidity investments are (1) type of issuer and security, (2) maturity, and (3) credit quality or rating. Accordingly, quality disclosure for a portfolio of non-mortgage liquidity investments should include a detailed categorization of the portfolio with respect to each of these elements and cross-categorization, so that (for example) the quantity of any longer-maturity, lower-credit-quality assets is clearly identified. Information about fair values; yields; and narrative discussions of objectives, risk management policies, and controls can also promote transparency of risk and should be included. Such disclosures should be made quarterly, and they should be made using average balances so that average risks can be assessed—not just the risks on a given date.

2. Over the next few quarters, OFHEO will discuss more specifically with the Enterprise how these disclosures will meet the expectations expressed in this guidance. An example of a disclosure format that may be used by the Enterprise is available on the OFHEO Web site at *http://www.ofheo.gov.* However, the Enterprise may disclose the risks in its non-mortgage liquidity investment activities, consistent with the expectations expressed in this guidance, using a format of its choice.

E—Summary

This Guidance sets forth OFHEO's process for evaluating the safety and soundness of liquidity non-mortgage investment activities. OFHEO remains committed to ensuring the Enterprises remain financially sound, have appropriate control environments, and engage only in financially sound business and investment activities. OFHEO's examiners have been instructed to incorporate this evaluation process into their ongoing safety and soundness examinations. Examiners will evaluate and test the Enterprise's non-mortgage liquidity investment processes and activities to ensure they are in compliance with this guidance.

Appendix C to Part 1720—Policy Guidance; Safety and Soundness Standards for Information

A—Introduction

1. Scope.
2. Preservation of Existing Authority.
3. Definitions.

B—Safety and Soundness Standards for Information

1. Information Security Program.
2. Objectives.

C—Development and Implementation of Information Security Program

1. Involve the Board of Directors.
2. Assess Risk.
3. Manage and Control Risk.
4. Oversee Service Provider Arrangements.
5. Adjust the Program.
6. Report to the Board.
7. Implementation.

A—Introduction

The Policy Guidance on Safety and Soundness Standards for Information sets forth standards pursuant to section 1313 of the Federal Housing Enterprise Safety and Soundness Act (12 U.S.C. 4513). The Guidance addresses standards for developing and implementing administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of information.

1. Scope. The Guidance applies to information maintained by or on behalf of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises).

2. Preservation of Existing Authority. Nothing in the Guidance in any way limits the authority of OFHEO to otherwise address unsafe or unsound conditions or practices or violations of applicable law, regulation or supervisory order. Action referencing the Policy Guidance may be taken separate from, in conjunction with or in addition to any other enforcement action available to OFHEO. Compliance with the Policy Guidance in general would not preclude a finding by the agency that an Enterprise is otherwise engaged in a specific unsafe or unsound practice or is in an unsafe or unsound condition, or requiring corrective or remedial action with regard to such practice or condition. That is, supervisory action is not precluded against an Enterprise that has not been cited for a deficiency under the Policy Guidance. Conversely, an Enterprise's failure to comply with one of the supervisory requirements set forth in the Policy Guidance may not warrant a formal supervisory response from OFHEO, if the agency determines the matter may be otherwise addressed in a satisfactory manner. For example, OFHEO may require the submission of a plan to achieve compliance with the particular requirement or standard without taking any other enforcement action.

3. Definitions. For purposes of the Guidance, the following definitions apply:

a. *Information* means any record of an Enterprise, whether in paper, electronic, or other form, that is handled or maintained by or on behalf of an Enterprise;

b. *Information security program* means the administrative, technical, or physical safeguards used by an Enterprise to access, collect, process, store, use, transmit, dispose of, or otherwise handle information;

c. *Information systems* means any methods used to access, collect, store, use, transmit, protect, or dispose of information;

d. *Service provider* means any person or entity, including any third party vendor, that maintains, processes or otherwise is permitted access to information through its provision of services directly or indirectly to an Enterprise.

B—Safety and Soundness Standards For Information

1. Information Security Program. Each Enterprise shall implement a comprehensive written information security program that includes administrative, technical, and physical safeguards appropriate to the nature and scope of its activities. While all parts of the Enterprise are not required to implement a uniform set of policies, all elements of the information security program must be coordinated.

2. Objectives. An Enterprise's information security program shall be designed to:

a. Ensure the security and confidentiality of information;

b. Protect against any anticipated threats or hazards to the security or integrity of such information; and

c. Protect against unauthorized access to or use of such information.

C—Development and Implementation of Information Security Program

1. Involve the Board of Directors. The board of directors or an appropriate committee of the board of each Enterprise shall:

a. Approve the Enterprise's written information security program; and

b. Oversee the development, implementation, and maintenance of the Enterprise's information security program, including assigning specific responsibility for its implementation and reviewing reports from management.

2. Assess Risk. Each Enterprise shall:

a. Identify reasonably foreseeable internal and external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of information or information systems;

b. Assess the likelihood and potential damage of these threats, taking into consideration the sensitivity of nonpublic information; and

c. Assess the sufficiency of policies, procedures, information systems, and other arrangements in place to control risks.

3. Manage and Control Risk. Each Enterprise shall:

a. Design its information security program to manage and control the identified risks, commensurate with the sensitivity of the information as well as the complexity and scope of the Enterprise's activities. Each Enterprise should consider whether the following security measures are appropriate for the Enterprise and, if so, adopt those measures the Enterprise concludes are appropriate:

i. Access controls over information systems, including controls to authenticate and permit access only to authorized individuals and controls to prevent employees from providing information to unauthorized individuals who may seek to obtain this information through fraudulent means;

ii. Access restrictions at physical locations containing information, such as buildings, computer facilities, and records storage facilities to permit access only to authorized individuals;

iii. Encryption of electronic information, including while in transit or in storage on networks or systems to which unauthorized individuals may have access;

iv. Procedures designed to ensure that information system modifications are consistent with the Enterprise's information security program;

v. Dual control procedures, segregation of duties, and employee background checks for employees with responsibilities for or access to information;

vi. Monitoring systems and procedures to detect actual and attempted attacks on or intrusion into information systems;

vii. Response programs that specify actions to be taken when the Enterprise suspects or detects that unauthorized individuals have gained access to information systems, including appropriate reports to regulatory and law enforcement agencies; and

viii. Measures to protect against destruction, loss or damage of information due to potential environmental hazards, such as fire and water damage or technological failures.

b. Train staff to implement the Enterprise's information security program; and

c. Regularly test the key controls, systems and procedures of the information security program. The frequency and nature of such tests should be determined by the Enterprise's risk assessment. Tests should be conducted or reviewed by independent third parties or staff that are independent of those that develop or maintain the security programs.

4. Oversee Service Provider Arrangements. Each Enterprise shall:

a. Exercise appropriate due diligence in selecting its service providers;

b. Require its service providers by contract to implement appropriate measures designed to meet the objectives of the Guidance; and

c. Where indicated by the Enterprise's risk assessment, monitor its service providers to confirm that they have satisfied their obligations as required by section 9(b). As part of this monitoring, an Enterprise should review audits, summaries of test results, or other equivalent evaluations of its service providers.

5. Adjust the Program. Each Enterprise shall monitor, evaluate, and adjust, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of its information, internal or external threats to information, and the Enterprise's own changing business arrangements, such as acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to information systems.

6. Report to the Board. Each Enterprise shall report to its board or an appropriate committee of the board at least annually. This report should describe the overall status of the information security program and the Enterprise's compliance with the Guidance. The reports should discuss material matters related to its program, addressing issues such as: risk assessment; risk management and control decisions; service provider arrangements; results of testing; security breaches or violations and management's responses; and recommendations for changes in the information security program.

7. Implementation. a. Each Enterprise should implement an information security program pursuant to the Guidance.

b. Until January 1, 2004, a contract that an Enterprise has entered into with a service provider to perform services for it or functions on its behalf satisfies the provisions of section 9, even if the contract does not include a requirement that the servicer maintain the security and confidentiality of information, as long as the Enterprise entered into the contract on or before the effective date.

Dated: August 20, 2002.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE187, Special Condition 23–127–SC]

Special Conditions; Chelton Flight Systems, Inc.; Various Airplane Models; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Chelton Flight Systems, Inc., 1109 Main Street, Suite 560, Boise, ID 83702, for a Supplemental Type Certificate for the models listed under the heading ''Type Certification Basis.'' This special condition includes various airplane models to streamline the certification process as recommended from completed Safer Sky Programs. The primary objective of streamlining the certification process is to improve the safety of the airplane fleet by fostering the incorporation of both new technologies that can be certificated affordably under 14 CFR part 23.

The airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) display Model EFIS II manufactured by Chelton Flight Systems, Inc., for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is August 21, 2002. Comments must be received on or before September 30, 2002.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE187, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE187. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions

may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE187.'' The postcard will be date stamped and returned to the commenter.

Background

On April 25, 2002, Chelton Flight Systems, Inc., 1109 Main Street, Suite 560, Boise, ID 83702, made an application to the FAA for a new Supplemental Type Certificate for airplane models listed under the type certification basis. The models are currently approved under the type certification basis listed in the paragraph headed ''Type Certification Basis.'' The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Chelton Flight Systems, Inc., must show that affected airplane models, as changed, continue to meet the applicable provisions, of the regulations incorporated by reference in Type Certificate Numbers listed below or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the original ''type certification basis'' and can be found in the Type Certificate Numbers listed below. In addition, the type certification basis of airplane models that embody this modification will include § 23.1301 of Amendment 23–20; §§ 23.1309, 23.1311, and 23.1321 of Amendment 23–49; and § 23.1322 of Amendment 23–43; exemptions, if any; and the special conditions adopted by this rulemaking action.

Models	Type certificate number
Aerostar Models 360/400	A11WE, Rev. 4, 10/22/92
Aerostar Models PA–60–600/–601/–601P/–602P/–700P	A17WE, Rev. 22
American Champion Models 8GCBC/8KCAB	A21CE, Rev. 11, 8/25/97
Aviat A–1/–1A/–1B	A22NM, Rev. 12, 6/15/00
Beechcraft 60/A60/B60	A12CE, Rev. 23, 4/15/96
Beechcraft Model 2000	A38CE, Rev. 10, 8/23/01
Beechcraft Model 3000	A00009WI, Rev. 8, 11/29/01
Beechcraft Model 76	A29CE, Rev. 5, 4/15/96
Beechcraft Model F90	A31CE, Rev. 7, 4/15/96
Beechcraft Models 100/99/A/A100/A/C/A99/A/100B9/C9	A14CE, Rev. 35, 5/18/00
Beechcraft Models 18D/A18A/D/S18D/SA18A/D	A–684, Rev. 2, 4/15/96
Beechcraft Models 35/R/A35/B35/C35/D35/E35/F35/G35	A–777, Rev. 57, 4/15/96
Beechcraft Models 35–33/A33/B33/C33/C33A/36/A36/A36TC/B36TC/E33/A/C/F33/A/C/G33/H35/J35/K35/M35/N35/P35/S35/V35/V35A/V35B.	3A15, Rev. 88, 1/15/00
Beechcraft Models 3N/3NM/3TM/C–45G/H/D18C/D18S/E18S/–9700/G18S/H18/JRB–6/RC–45J/TC–45G/TC–45H/TC–45J.	A–765, Rev. 74, 4/15/96
Beechcraft Models 50/B50/C50/D50/D50A/B/C/E/E–5990/E50/F50/G50/H50/J50	5A4, Rev. 60, 4/15/96
Beechcraft Models 56TC/58/58A/95/95–55/95–A55/95–B55/95–B55A/95–B55B/95–C55/95–C55A/A56TC/B95/B95A/D55/D55A/D95A/E55/E55A/E95.	3A16, Rev. 80, 1/15/00
Beechcraft Models 58P/PA/TC/TCA	A23CE, Rev. 14, 4/15/96
Beechcraft Models 65/–80/–88/–90/–A80/–A80–8800/–A90/–A90–1/–A90–2/–A90–3/–A90–4/–B80/70/A65/–8200/B90/C90/A/E90/H90.	3A20, Rev. 60, 9/10/01
Britten-Norman Models BN–2/A/2A–2/2A–20/2A–21/2A–26/2A–27/2A–3/2A–6/2A–8/2A–9/2B–20/2B–21/2B–26/2B–27/2T/2T–4R.	A17EU, Rev. 15, 1/3/96
Britten-Norman Models BN2A MK. 111/–2/–3	A29EU, Rev. 3, 6/21/78
Cessna 206/H/P206/A/B/C/D/E/H/TP206A/B/C/D/E/TU206A/B/C/D/E/F/G/U206/A/B/C/D/E/F/G.	A4CE, Rev. 40, 6/19/02
Cessna 207/A/T207/A	A16CE, Rev. 20, 10/15/94
Cessna Model 177RG	A20CE, Rev. 18, 10/15/94
Cessna Model 336	A2CE, Rev. 6, 6/15/99
Cessna Model 441	A28CE, Rev. 11, 8/15/99
Cessna Model T303	A34CE, Rev. 5, 10/15/94
Cessna Models 172/A/B/C/D/E/F//H/I/K/L/M/N/P/Q/R/S	3A12, Rev. 68, 10/11/01
Cessna Models 170/A/B	A–799, Rev. 51, 7/15/98
Cessna Models 172RG/175/A/B/C/P172D/R172E/F/G/H/J/K	3A17, Rev. 44, 11/15/97
Cessna Models 177/A/B	A13CE, Rev. 23, 10/15/94
Cessna Models 180A/B/C/D/E/F/G/H/J/K	5A6, Rev. 64, 10/11/01
Cessna Models 182/A/B/C/D/E/F/G/H/J/K/L/M/N/P/Q/R/S/T/R182/T182/T/TR182	3A13, Rev. 59, 12/12/01
Cessna Models 185/A/B/C/D/E/A185E/F	3A24, Rev. 36, 11/15/99
Cessna Models 208/A/B	A37CE, Rev. 12, 6/15/99
Cessna Models 210/–5 (205)/–5A (205A)/A/B/C/D/E/F/G/H/J/K/L/M/N/R/P210N/R/T210F/G/H/J/K/L/M/N/R.	3A21, Rev. 45, 8/15/96
Cessna Models 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R/E310H	3A10, Rev. 61, 11/15/97
Cessna Models 320/–1/A/B/C/D/E/F/335/340/A	3A25, Rev. 25, 8/15/94
Cessna Models 337/A/B/C/D/E/F/G/H/M337B/P337H/T337B/C/D/E/F/G/H/H–SP	A6CE, Rev. 38, 10/11/01
Cessna Models 401/A/B/402/A/B/C/411/A/414/A/421/A/B/C/425	A7CE, Rev. 44, 5/15/99
Cessna Models 404/406	A25CE, Rev. 11, 6/15/95
Cessna Models 501/551	A27CE, Rev. 15, 2/25/02
Cessna Models 525/A	A1WI, Rev. 11, 7/9/01

Models	Type certificate number
Cirrus Models SR20/22	A00009CH, Rev. 3, 9/28/01
Commander Model 700	A12SW, Rev. 10, 1/1/90
Commander Models 112/B/TC/TCA/114/A/B/TC	A12SO, Rev. 21, 8/4/95
Commander Models 500/–A/–B/–S/–U/520/560/–A/–E	6A1, Rev. 45, 1/1/90
Commander Models 560–F/680/E/F/FL/FL(P)/F(P)/T/V/W681/685/690/A/B/C/D/695/A/B/720.	2A4, Rev. 46, 04/03/2000
de Havilland Model DHC–3	A–815, Rev. 4, 6/26/98
de Havilland Models DHC–2 Mk.I/II/III	A–806, Rev. 21, 1/21/94
de Havilland Models DHC–61/–100/–200/–300	A9EA, Rev. 11, 6/20/00
Diamond Model DA–40	A47CE, Rev. 2, 4/8/02
Extra Models EA–200/300/L/S	A67EU, Rev. 5, 06/03/99
Extra Model EA–400	A43CE, Rev. 5, 3/5/02
Grob Models G115EG/G115/A/B/C/C2/D/D2	A57EU, Rev. 10, 2/6/01
Helio Courier Models 15A/20	3A3, Rev. 7, 3/1/91
Helio Courier Models H–250/295/391/391B/395/395A/700/800/T–295	1A8, Rev. 33, 9/18/97
Lancair Model LC40–550FG	A00003SE, Rev. 8, 2/26/02
Learjet Model 23	A5CE, Rev. 10, 7/15/90
Maule Models M–4/–180C/S/T/–210/C/S/T/–220/C/S/T/M–4C/S/T/M–5–180C/–200/–210C/–210TC/–220C/–235C/M–6–180/6–235/M–7–235/A/B/C/–260 MT–7–235/–260/–160/–160C/–180/A/AC/B/C/–235/–420 MXT–7–160/–180/A/–420.	3A23, Rev. 28, 4/6/00
Mitsubishi Models MU–2B/–10/–15/–20/–25/–26/–30/–35/–36	A2PC, Rev. 16, 6/30/75
Mitsubishi Models MU–2B–25/–26/A/–35/–36/A/–40/–60	A10SW, Rev. 13, 4/2/98
Mooney Models M20/A/B/C/D/E/F/G/J/K/L/M/R/S	2A3, Rev. 46, 8/10/99
ParisJet Models M.S. 760 (Paris I)/M.S. 760B (Paris II)/M.S. 760.A (Paris IA)	7A3, Rev. 3, 3/17/98
Piaggio Model P–180	A59EU, Rev. 9, 10/25/00
Pilatus Model PC–7	A50EU, Rev. 2, 7/1/96
Pilatus Models PC–12/–12/45	A78EU, Rev. 9, 3/30/01
Pilatus Models PC–6/–H1/–H2/PC–6/350/–H1/–H2 PC–6/A/–H1/–H2/B–H2/B1–H2/B2–H2/B2–H4/C–H2/C1–H2.	7A15, Rev. 11, 8/9/99
Piper Models PA–12/S	A–780, Rev. 13, 3/30/01
Piper Models PA–18/105/125/135A/A–135/A–150/AS–125/AS–135/AS–150/S/S–105/S–125/S–135/S–150.	1A2, Rev. 37, 9/4/96
Piper Models PA–24/250/260/400	1A15, Rev. 33, 10/1/97
Piper Models PA–28–140/150/151/160/161/180/181/201T/235/236/R–180 RT–201T/S–160/S–180.	2A13, Rev. 45, 12/12/01
Piper Models PA–30/–39/–40	A1EA, Rev. 15, 10/1/97
Piper Models PA–31/–300/–325/–350	A20SO, Rev. 9, 3/19/01
Piper Models PA–31P/–350/PA–31T/1/2/3	A8EA, Rev. 21, 4/8/98
Piper Models PA–32–260/–300/–301/T/PA–32R–300/–301/–301T/PA–32RT–300/–300T/PA–32S–300.	A3SO, Rev. 26, 7/23/97
Piper Models PA–34–200/–200T/–220T	A7SO, Rev. 14, 6/1/01
Piper Models PA–42/–42–1000/–42–720	A23SO, Rev. 14, 11/16/01
Piper Models PA–44–180/T	A19SO, Rev. 8, 11/14/01
Piper Models PA–46–310P/–350P/–500TP	A25SO, Rev. 10, 1/2/02
Revo Models Colonial C–1/–2, Lake LA–4/A/P/–200/250	1A13, Rev. 25, 11/8/99
Shorts Models SC–7 Series 2/SC–7 Series 3	A15EU, Rev. 9, 8/1/90
Slingsby Models T67M260/–T3A	A73EU, Rev. 4, 7/27/00
Socata Model TBM–700	A60EU, Rev. 8, 11/6/01
Socata Models TB 10/20/200/21/9	A51EU, Rev. 14, 4/6/01

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101 (b)(2) of Amendment 21–69.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

Chelton Flight Systems, Inc., plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to one modification to the airplane models listed under the heading ''Type Certification Basis.'' Should Chelton Flight Systems, Inc., apply to extend this modification to include additional airplane models, the special conditions would extend to these models as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features of one modification to several models of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of some airplane models, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for airplane models listed under the ''Type Certification Basis'' heading modified by Chelton Flight Systems, Inc., to add an EFIS.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or

cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on August 21, 2002.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–22117 Filed 8–29–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM226; Special Conditions No. 25–211–SC]

Special Conditions: Airbus Model A319, A320, and A321 Series Airplane; Seats With Inflatable Lapbelts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Airbus Model A319, A320, and A321 series airplanes. These airplanes, as modified by AMSAFE Aviation, will have a novel or unusual design feature associated with seats with inflatable lapbelts. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is August 16, 2002. Comments must be received on or before September 30, 2002.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration (FAA), Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM226, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM226. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2195; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

FAA's Determination as To Need for Public Process

The FAA has determined that notice and opportunity for prior public comment are unnecessary in accordance with 14 CFR 11.38, because the FAA has provided previous opportunities to comment on substantially identical special conditions, and has fully considered and addressed all the substantive comments received. Based on a review of the comment history and the comment resolution, the FAA is satisfied that new comments are unlikely. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Although this action is in the form of final special conditions, and for the reasons stated above, is not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to participate in this rulemaking by submitting comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On January 10, 2002, AMSAFE Aviation, P.O. Box 1570, Higley, Arizona 85236, applied for a supplemental type certificate to install AMSAFE Aviation Inflatable Restraints (AAIR) inflatable lapbelts for protection against head injury and head entrapment on certain seats in Airbus Model A319, A320, and A321 series airplanes. The certification of the Airbus Model A319, A320, and A321 series airplanes is currently scheduled for August 30, 2002. The Airbus Model A319, 320, and 321 series airplanes are swept-wing, conventional tail, twin-engine, turbofan-powered transport airplanes. The inflatable lapbelt behaves similarly to an automotive inflatable airbag, but in this case the airbag is integrated into the lapbelt, and inflates away from the seated occupant. While inflatable airbags are now standard in the automotive industry, the use of an inflatable lapbelt is novel for commercial aviation.

Title 14 Code of Federal Regulations (14 CFR) 25.785 requires that occupants be protected from head injury by either the elimination of any injurious object within the striking radius of the head, or by padding. Traditionally, this has required a set back of 35 inches from any bulkhead, other rigid interior feature or, where that is not practical, specified types of padding. The relative effectiveness of these means of injury protection was not quantified. With the adoption of Amendment 25–64 to 14 CFR part 25, specifically § 25.562, a new standard that quantifies required head injury protection was created.

Section 25.562 specifies that dynamic tests must be conducted for each seat type installed in the airplane. In particular, the regulations require that persons not suffer serious head injury under the conditions specified in the tests, and that a Head Injury Criteria (HIC) measurement of not more than 1000 units be recorded, should contact with the cabin interior occur. While the test conditions described in this section of the regulations are specific, it is the intent of the requirement that an adequate level of head injury protection be provided for crash severity up to and including that specified.

It should be noted that while Amendment 25–64 is not part of the Airbus Model A319, A320, and A321 certification basis, Airbus voluntarily elected to comply with portions of 14 CFR 25.562, Amendment 25–64, for the A319 and A321 airplanes, with the exception of § 25.562(c)(5) and (c)(6) that contain the requirements for femur injury and HIC. Therefore, the seat installations with inflatable lapbelts are required to meet the requirements of § 25.562 except for § 25.562(c)(5) and (c)(6).

Because §§ 25.562 and 25.785 and associated guidance do not adequately address seats with inflatable lapbelts, the FAA recognizes that appropriate pass/fail criteria that do fully address the safety concerns specific to occupants of these seats need to be developed.

The inflatable lapbelt has two potential advantages over other means of head impact protection. First, it can provide significantly greater protection than would be expected with energy-absorbing pads, and second, it can provide essentially equivalent protection for occupants of all statures. These are significant advantages from a safety standpoint, since such devices will likely provide a level of safety that exceeds the minimum standards of the regulations. Conversely, inflatable lapbelts in general are active systems and must be relied upon to activate properly when needed, as opposed to an energy-absorbing pad or upper torso restraint that is passive, and always available. Therefore, the potential advantages must be balanced against this and other potential disadvantages in order to develop standards that will provide an equivalent level of safety to that intended by the regulations.

The FAA has considered the installation of inflatable lapbelts to have two primary safety concerns: first, that they perform properly under foreseeable operating conditions, and second, that they do not perform in a manner or at such times as would constitute a hazard to the airplane or its occupants. This latter point has the potential to be the more rigorous of the requirements, owing to the active nature of the system. With this philosophy in mind, the FAA has considered the following as a basis for the special conditions.

The inflatable lapbelt will rely on electronic sensors for signaling and pyrotechnic charges, which then activate the lapbelt when needed. These same devices could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of such deployment must be considered in establishing the reliability of the system. AMSAFE must substantiate that the effects of an inadvertent deployment in flight are either not a hazard to the airplane, or that such deployment is an extremely improbable occurrence (less than 10^{-9} per flight hour). The effect of an inadvertent deployment on a passenger or crewmember that might be positioned close to the inflatable lapbelt should also be considered. The person could be either standing or sitting. A minimum reliability level will have to be established for this case, depending upon the consequences, even if the effect on the airplane is negligible.

The potential for an inadvertent deployment could be increased as a result of conditions in service. The installation must take ''wear and tear'' into account so that the likelihood of an inadvertent deployment is not increased to an unacceptable level. In this context, an appropriate inspection interval and self-test capability are considered necessary. Other outside influences are lightning and high intensity electromagnetic fields (HIRF). Since the sensors that trigger deployment are electronic, they must be protected from the effects of these threats. Existing Special Conditions No. 25–ANM–23 regarding lightning and HIRF are therefore applicable. For the purposes of compliance with those special conditions, if inadvertent deployment could cause a hazard to the airplane, the inflatable lapbelt is considered a critical system. If inadvertent deployment could cause injuries to persons, the inflatable lapbelt should be considered an essential system. Finally, the inflatable lapbelt installation should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the pyrotechnic squib.

In order to be an effective safety system, the inflatable lapbelt must function properly and must not introduce any additional hazards to occupants as a result of its functioning. There are several areas where the inflatable lapbelt differs from traditional occupant protection systems, and requires special conditions to ensure adequate performance.

Because the inflatable lapbelt is essentially a single use device, there is the potential that it could deploy under crash conditions that are not sufficiently severe as to require head injury protection from the inflatable lapbelt. Since an actual crash is frequently composed of a series of impacts before the airplane comes to rest, this could render the inflatable lapbelt useless if a larger impact follows the initial impact. This situation does not exist with energy absorbing pads or upper torso restraints, which tend to provide protection according to the severity of the impact. Therefore, the inflatable lapbelt installation should be such that the inflatable lapbelt will provide protection when it is required, and will not expend its protection when it is not needed. These special conditions contain no requirement for the inflatable lapbelt to provide protection from multiple impacts, where more than one impact would require protection.

Since each occupant's restraint system provides protection for that occupant only, the installation must address seats that are unoccupied. It will be necessary to show that the required protection is provided for each occupant regardless of the number of occupied seats, and considering that unoccupied seats may have lapbelts that are active.

Since a wide range of occupants could occupy a seat, the inflatable lapbelt should be effective for a wide range of occupants. The FAA has historically considered the range from the fifth percentile female to the ninety-fifth percentile male as the range of occupants that must be taken into account. In this case, the FAA is proposing consideration of a broader range of occupants, due to the nature of the lapbelt installation and its close proximity to the occupant. In a similar vein, these persons could have assumed the brace position, for those accidents where an impact is anticipated. Test data indicate that occupants in the brace position do not require supplemental protection, and so it would not be necessary to show that the inflatable lapbelt will enhance the brace position. However, the inflatable lapbelt must not introduce a hazard in that case by deploying into the seated, braced occupant.

Another area of concern is the use of inflatable lapbelts in seats occupied by children, who could be lap-held, in approved child safety seats, or occupying the seat directly. Similarly, if the seat is occupied by a pregnant woman, the installation needs to address such usage, either by demonstrating that it will function properly, or by adding appropriate limitation on usage.

Since the inflatable lapbelt will be electrically powered, there is the possibility that the system could fail due to a separation in the fuselage. Since this system is intended as crash/post-crash protection means, failure due to fuselage separation is not acceptable. As with emergency lighting, the system should function properly if such a separation occurs at any point in the fuselage. A separation that occurs at the location of the inflatable lapbelt would not have to be considered.

Since the inflatable lapbelt is likely to have a large volume displacement, the inflated bag could potentially impede egress of passengers. The bag deflates to absorb energy, so it is likely that an inflatable lapbelt would be deflated at the time that persons would be trying to leave their seats. Nonetheless, it is considered appropriate to specify a time interval after which the inflatable

lapbelt may not impede rapid egress. Ten seconds has been chosen as a reasonable time since this corresponds to the maximum time allowed for an exit to be openable. In actuality, it is unlikely that an exit would be prepared this quickly in an accident severe enough to warrant deployment of the inflatable lapbelt, and the inflatable lapbelt will likely deflate in much less than ten seconds.

Finally, it should be noted that the special conditions are applicable to the inflatable lapbelt system as installed. The special conditions are not an installation approval. Therefore, while the special conditions relate to each such system installed, the overall installation approval is a separate finding, and must consider the combined effects of all such systems installed.

Type Certification Basis

Under the provisions of § 21.101, Amendment 21–69, effective September 16, 1991, AMSAFE Aviation must show that the Airbus Model A319, A320, and A321, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A28NM or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A28NM are as follows:

Amendments 25–1 through 25–56 for Airbus Model A319, A320, and A321 series airplanes. The U.S. type certification basis for Airbus Model A319, A320, and A321 is established in accordance with § 21.29 and § 21.17 and the type certification application date. The U.S. type certification basis is listed in Type Certificate Data Sheet No. A28NM.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A319, A320, and A321 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Airbus Model A319, A320, and A321 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

AMSAFE Aviation will install an inflatable lapbelt on certain seats of Airbus Model A319, A320, A321 series airplanes, in order to reduce the potential for head injury and head entrapment in the event of an accident. The inflatable lapbelt works similarly to an automotive airbag, except that the airbag is integrated with the lap belt of the restraint system. The inflatable lapbelts are considered a novel or unusual design feature.

Federal regulations state the performance criteria for head injury and head entrapment protection in objective terms. However, none of these criteria are adequate to address the specific issues raised concerning seats with inflatable lapbelts. The FAA has therefore determined that, in addition to the requirements of part 25, special conditions are needed to address requirements particular to installation of seats with inflatable lapbelts.

Accordingly, in addition to the passenger injury criteria specified in § 25.785, these special conditions are adopted for the Airbus Model A319, A320, and A321 series airplanes equipped with inflatable lapbelts. Other special conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Discussion

From the standpoint of a passenger safety system, the inflatable lapbelt is unique in that it is both an active and entirely autonomous device. While the automotive industry has good experience with airbags, the conditions of use and reliance on the inflatable lapbelt as the sole means of injury protection are quite different. In automobile installations, the airbag is a supplemental system and works in conjunction with an upper torso restraint. In addition, the crash event is more definable and of typically shorter duration, which can simplify the activation logic. The airplane operating environment is also quite different from automobiles and includes the potential for greater ''wear and tear,'' and unanticipated abuse conditions (due to galley loading, passenger baggage, *etc.*). Airplanes also operate where exposure to high intensity electromagnetic fields could affect the activation system.

The following special conditions can be characterized as addressing either the safety performance of the system, or the system's integrity against inadvertent activation. Because a crash requiring use of the inflatable lapbelts is a relatively rare event, and because the consequences of an inadvertent activation are potentially quite severe, these latter requirements are probably the more rigorous from a design standpoint.

Prior Comment

One comment was received in response to the most recent publication of inflatable lapbelt special conditions (65 FR 60343), which are substantially identical to the special condition contained herein. The disposition of this comment is contained in Rules Docket No. NM176 and is available for examination by interested parties. In our disposition, we agreed with the commenter, but noted that the substance of the comment has already been addressed in showing compliance with existing regulations during the certification process. Therefore, this comment did not result in a change to the special conditions.

Applicability

As discussed above, these special conditions are applicable to the Airbus Model A319, A320, and A321 series airplanes modified by AMSAFE Aviation. Should AMSAFE Aviation apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A28NM to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on Airbus Model A319, A320, and A321 series airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

The FAA has determined that notice and opportunity for prior public comment are unnecessary in accordance with 14 CFR 11.38, because the FAA has provided previous opportunities to comment on substantially identical special conditions, and has fully considered and addressed all the substantive comments received. Based on a review of the comment history and the comment resolution the FAA is satisfied that new comments are unlikely. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, the Federal Aviation Administration (FAA) issues the following special conditions as part of the type certification basis for Airbus Model A319, A320, and A321 series airplanes modified by AMSAFE Aviation.

Seats With Inflatable Lapbelts

1. It must be shown that the inflatable lapbelt will deploy and provide protection under crash conditions where it is necessary to prevent serious head injury or head entrapment. The means of protection must take into consideration a range of stature from a two-year-old child to a ninety-fifth percentile male. The inflatable lapbelt must provide a consistent approach to energy absorption throughout that range. In addition, the following situations must be considered:

a. The seat occupant is holding an infant.

b. The seat occupant is a child in a child restraint device.

c. The seat occupant is a child not using a child restraint device.

d. The seat occupant is a pregnant woman.

2. The inflatable lapbelt must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have active seatbelts.

3. The design must prevent the inflatable lapbelt from being either incorrectly buckled or incorrectly installed such that the inflatable lapbelt would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant, and will provide the required head injury protection.

4. It must be shown that the inflatable lapbelt system is not susceptible to inadvertent deployment as a result of ''wear and tear,'' or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), likely to be experienced in service.

5. Deployment of the inflatable lapbelt must not introduce injury mechanisms to the seated occupant, or result in injuries that could impede rapid egress. This assessment should include consideration of an occupant who is in the brace position when it deploys and an occupant whose belt is loosely fastened.

6. It must be shown that an inadvertent deployment, that could cause injury to a standing or sitting person, is improbable.

7. It must be shown that inadvertent deployment of the inflatable lapbelt, during the most critical part of the flight, will either not cause a hazard to the airplane or is extremely improbable.

8. It must be shown that the inflatable lapbelt will not impede rapid egress of occupants 10 seconds after its deployment.

9. The system must be protected from lightning and HIRF. The threats specified in Special Condition No. 25–ANM–23 are incorporated by reference for the purpose of measuring lightning and HIRF protection. For the purposes of complying with HIRF requirements, the inflatable lapbelt system is considered a ''critical system'' if its deployment could have a hazardous effect on the airplane; otherwise it is considered an ''essential'' system.

10. The inflatable lapbelt must function properly after loss of normal aircraft electrical power, and after a transverse separation of the fuselage at the most critical location. A separation at the location of the lapbelt does not have to be considered.

11. It must be shown that the inflatable lapbelt will not release hazardous quantities of gas or particulate matter into the cabin.

12. The inflatable lapbelt installation must be protected from the effects of fire such that no hazard to occupants will result.

13. There must be a means for a crewmember to verify the integrity of the inflatable lapbelt activation system prior to each flight or it must be demonstrated to reliably operate between inspection intervals.

Issued in Renton, Washington, on August 16, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–22119 Filed 8–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM220; Special Conditions No. 25–210–SC]

Special Conditions: Bombardier Model CL–600–2C10 Series Airplanes; Seats With Inflatable Lapbelts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Bombardier Model CL–600–2C10 series airplane. This airplane as modified by Weber Aircraft will have a novel or unusual design feature associated with inflatable lapbelts. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is August 16, 2002. Comments must be received on or before September 30, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM220, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM220 Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Thompson, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1157; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

FAA's Determination as to Need for Public Process

The FAA has determined that notice and opportunity for prior public comment are unnecessary in accordance with 14 CFR 11.38, because the FAA has provided previous opportunities to comment on substantially identical special conditions, and has fully considered and addressed all the substantive comments received. Based on a review of the comment history and the comment resolution the FAA is satisfied that new comments are unlikely. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Although this action is in the form of final special conditions and, for the reasons stated above, is not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to submit written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

In a letter dated January 29, 2002, Weber Aircraft applied for a supplemental type certificate to install AMSAFE Aviation Inflatable Restraints (AAIR) inflatable lapbelts for head injury protection on certain seats in Bombardier Model CL–600–2C10 series airplanes. The Bombardier Model CL–600–2C10 series airplane is a swept-wing, conventional-tail, twin-engine, turbofan-powered transport airplane currently approved under Type Certificate No. A21EA. The inflatable lapbelt is designed to limit occupant forward movement in the event of an accident. This will reduce the potential for head injury, thereby reducing the head injury criteria (HIC) calculation. The inflatable lapbelt behaves similarly to an automotive inflatable airbag, but in this case the airbag is integrated into the lapbelt, and inflates away from the seated occupant. While inflatable airbags are now standard in the automotive industry, the use of an inflatable lapbelt is novel for commercial aviation.

Title 14 Code of Federal Regulations (14 CFR) 25.785 requires that occupants be protected from head injury by either the elimination of any injurious object within the striking radius of the head, or by padding. Traditionally, this has required a setback of 35 inches from any bulkhead or other rigid interior feature or, where that is not practical, specified types of padding. The relative effectiveness of these means of injury protection had not been quantified. With the adoption of Amendment 25–64 to 14 CFR part 25, specifically § 25.562, a new standard that quantifies required head injury protection was created.

Section 25.562 specifies that dynamic tests must be conducted for each seat type installed in the airplane. In particular, the regulations require that persons not suffer serious head injury under the conditions specified in the tests, and that a HIC measurement of not more than 1000 units be recorded, should contact with the cabin interior occur. While the test conditions described in this section of the regulations are specific, it is the intent of the requirement that an adequate level of head injury protection be provided for crash severity up to and including that specified.

Amendment 25–64 is part of the Bombardier Model CL–600–2C10 series airplane certification basis. Therefore, the seat installation with inflatable lapbelts must meet the requirement that a HIC measurement of less than 1000 be demonstrated for occupants of seats incorporating the inflatable lapbelt.

Because §§ 25.562 and 25.785 and associated guidance do not adequately address seats with inflatable lapbelts, the FAA recognizes that appropriate pass/fail criteria that do fully address the safety concerns specific to occupants of these seats need to be developed.

The inflatable lapbelt has two potential advantages over other means of head impact protection. First, it can provide significantly greater protection than would be expected with energy-absorbing pads, and second, it can provide essentially equivalent protection for occupants of all statures. These are significant advantages from a safety standpoint, since such devices will likely provide a level of safety that exceeds the minimum standards of the regulations. Conversely, inflatable lapbelts in general are active systems and must be relied upon to activate properly when needed, as opposed to an energy-absorbing pad or upper torso restraint that is passive, and always available. Therefore, the potential advantages must be balanced against this and other potential disadvantages in order to develop standards that will provide an equivalent level of safety to that intended by the regulations.

The FAA has considered the installation of inflatable lapbelts to have two primary safety concerns: first, that they perform properly under foreseeable operating conditions, and second, that they do not perform in a manner or at such times as would constitute a hazard to the airplane or its occupants. This latter point has the potential to be the more rigorous of the requirements, owing to the active nature of the system. With this philosophy in mind, the FAA has considered the following as a basis for the special conditions.

The inflatable lapbelt will rely on electronic sensors for signaling to activate pyrotechnic charges, which then activate the lapbelt when needed. These same devices could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of such deployment must be considered in establishing the reliability of the system. AMSAFE must substantiate that the effects of an inadvertent deployment in flight are either not a hazard to the airplane, or that such deployment is an extremely improbable occurrence (less than 10^{-9} per flight hour). The effect of an inadvertent deployment on a passenger or crewmember that might be positioned close to the inflatable lapbelt should also be considered. The person could be either standing or sitting. A minimum reliability level will have to be established for this case, depending upon the consequences, even if the effect on the airplane is negligible.

The potential for an inadvertent deployment could be increased as a result of conditions in service. The installation must take ''wear and tear'' into account so that the likelihood of an inadvertent deployment is not increased

to an unacceptable level. In this context, an appropriate inspection interval and self-test capability are considered necessary. Other outside influences are lightning and high intensity electromagnetic fields (HIRF). Since the sensors that trigger deployment are electronic, they must be protected from the effects of these threats. Existing Special Conditions No. 25–ANM–109 regarding lightning and HIRF are therefore applicable. For the purposes of compliance with those special conditions, if inadvertent deployment could cause a hazard to the airplane, the inflatable lapbelt is considered a critical system. If inadvertent deployment could cause injuries to persons, the inflatable lapbelt should be considered an essential system. Finally, the inflatable lapbelt installation should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the pyrotechnic squib.

In order to be an effective safety system, the inflatable lapbelt must function properly and must not introduce any additional hazards to occupants as a result of its functioning. There are several areas in which the inflatable lapbelt differs from traditional occupant protection systems, and requires special conditions to ensure adequate performance.

Because the inflatable lapbelt is essentially a single use device, there is the potential that it could deploy under crash conditions that are not sufficiently severe to require head injury protection from the inflatable lapbelt. Since an actual crash is frequently composed of a series of impacts before the airplane comes to rest, this could render the inflatable lapbelt useless if a larger impact follows the initial impact. This situation does not exist with energy absorbing pads or upper torso restraints, which tend to provide protection according to the severity of the impact. Therefore, the inflatable lapbelt installation should be such that the inflatable lapbelt will provide protection when it is required, and will not expend its protection when it is not needed. These special conditions contain no requirement for the inflatable lapbelt to provide protection from multiple impacts, where more than one impact would require protection.

Since each occupant's restraint system provides protection for that occupant only, the installation must address seats that are unoccupied. It will be necessary to show that the required protection is provided for each occupant regardless of the number of occupied seats, and considering that unoccupied seats may have lapbelts that are active.

Since a wide range of occupants could occupy a seat, the inflatable lapbelt should be effective for a wide range of occupants. The FAA has historically considered the range from the fifth percentile female to the ninety-fifth percentile male as the range of occupants that must be taken into account. In this case, the FAA is proposing consideration of a broader range of occupants, due to the nature of the lapbelt installation and its close proximity to the occupant. In a similar vein, these persons could have assumed the brace position, for those accidents where an impact is anticipated. Test data indicate that occupants in the brace position do not require supplemental protection, and so it would not be necessary to show that the inflatable lapbelt will enhance the brace position. However, the inflatable lapbelt must not introduce a hazard in that case by deploying into the seated, braced occupant.

Another area of concern is the use of inflatable lapbelts in seats occupied by children, who could be lap-held, in approved child safety seats, or occupying the seat directly. Similarly, if the seat is occupied by a pregnant woman, the installation needs to address such usage, either by demonstrating that it will function properly, or by adding appropriate limitation on usage.

Since the inflatable lapbelt will be electrically powered, there is the possibility that the system could fail due to a separation in the fuselage. Since this system is intended as a crash/post-crash protection means, failure due to fuselage separation is not acceptable. As with emergency lighting, the system should function properly if such a separation occurs at any point in the fuselage. A separation that occurs at the location of the inflatable lapbelt would not have to be considered.

Since the inflatable lapbelt is likely to have a large volume displacement, the inflated bag could potentially impede egress of passengers. The bag deflates to absorb energy, so it is likely that an inflatable lapbelt would be deflated at the time that persons would be trying to leave their seats. Nonetheless, it is considered appropriate to specify a time interval after which the inflatable lapbelt may not impede rapid egress. Ten seconds has been chosen as a reasonable time, since this corresponds to the maximum time allowed for an exit to be openable. In actuality, it is unlikely that an exit would be prepared this quickly in an accident severe enough to warrant deployment of the inflatable lapbelt, and the inflatable lapbelt will likely deflate in much less than ten seconds.

Finally, it should be noted that the special conditions are applicable to the inflatable lapbelt system as installed. The special conditions are not an installation approval. Therefore, while the special conditions relate to each such system installed, the overall installation approval is a separate finding, and must consider the combined effects of all such systems installed.

Type Certification Basis

Under the provisions of § 21.101 Amendment 21–69, effective September 16, 1991, Weber Aircraft must show that the Bombardier Model CL–600–2C10 series airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A21EA or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A21EA are 14 CFR part 25 dated February 1, 1965, including Amendments 25–1 through 25–86, with the following exceptions: Section 25.783(f) as amended by Amendment 25–23 for the cargo compartment door, the main avionics compartment door, and the service/emergency door; § 25.571 as amended by Amendment 25–96, and § 25.493 as amended by Amendment 25–97. The U.S. type certification basis for the Bombardier Model CL–600–2C10 series airplanes is established in accordance with §§ 21.29 and 21.17 and the type certification application date. The U.S. type certification basis is listed in Type Certificate Data Sheet No. A21AE.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Bombardier Model CL–600–2C10 series airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Bombardier Model CL–600–2C10 series airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the

noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2) Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1) Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

Weber Aircraft is proposing to install an inflatable lapbelt on certain seats of Bombardier CL–600–2C10 series airplanes, in order to reduce the potential for head injury in the event of an accident. The inflatable lapbelt works similarly to an automotive airbag, except that the airbag is integrated with the lap belt of the restraint system. The inflatable lapbelts are considered a novel or unusual design feature.

Federal regulations state the performance criteria for head injury protection in objective terms. However, none of these criteria are adequate to address the specific issues raised concerning seats with inflatable lapbelts. The FAA has therefore determined that, in addition to the requirements of part 25, special conditions are needed to address requirements particular to installation of seats with inflatable lapbelts.

Accordingly, in addition to the passenger injury criteria specified in § 25.785, these special conditions are adopted for the Bombardier Model CL–600–2C10 series airplanes equipped with inflatable lapbelts. Other special conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Discussion

From the standpoint of a passenger safety system, the inflatable lapbelt is unique in that it is both an active and entirely autonomous device. While the automotive industry has good experience with airbags, the conditions of use and reliance on the inflatable lapbelt as the sole means of injury protection are quite different. In automobile installations, the airbag is a supplemental system and works in conjunction with an upper torso restraint. In addition, the crash event is more definable and of a typically shorter duration, which can simplify the activation logic. The airplane operating environment is also quite different from that of automobiles and includes the potential for greater ''wear and tear,'' and unanticipated abuse conditions (due to galley loading, passenger baggage, *etc.*). Airplanes also operate where exposure to high intensity electromagnetic fields could affect the activation system.

The following special conditions can be characterized as addressing either the safety performance of the system or the system's integrity against inadvertent activation. Because a crash requiring use of the inflatable lapbelts is a relatively rare event, and because the consequences of an inadvertent activation are potentially quite severe, these latter requirements are probably the more rigorous from a design standpoint.

Prior Comment

One comment was received in response to the most recent publication of inflatable lapbelt special conditions (65 FR 60343), which are substantially identical to the special conditions contained herein. The disposition of this comment is contained in Rules Docket No. NM176 and is available for examination by interested parties. In our disposition, we agreed with the commenter, but noted that the substance of the comment has already been addressed in showing compliance with existing regulations during the certification process. Therefore, this comment did not result in a change to the special conditions.

Applicability

As discussed above, these special conditions are applicable to the Bombardier Model CL–600–2C10 series airplane. Should Weber Aircraft apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A21EA to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1) Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

The FAA has determined that notice and opportunity for prior public comment are unnecessary in accordance with 14 CFR 11.38, because the FAA has provided previous opportunities to comment on substantially identical special conditions, and has fully considered and addressed all the substantive comments received. Based on a review of the comment history and the comment resolution, the FAA is satisfied that new comments are unlikely. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Bombardier Model CL–600–2C10 series airplanes modified by Weber Aircraft.

Seats With Inflatable Lapbelts

1. It must be shown that the inflatable lapbelt will deploy and provide protection under crash conditions where it is necessary to prevent serious head injury. The means of protection must take into consideration a range of stature from a two-year-old child to a ninety-fifth percentile male. The inflatable lapbelt must provide a consistent approach to energy absorption throughout that range. In addition, the following situations must be considered:

a. The seat occupant is holding an infant.

b. The seat occupant is a child in a child restraint device.

c. The seat occupant is a child not using a child restraint device.

d. The seat occupant is a pregnant woman.

2. The inflatable lapbelt must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have active seatbelts.

3. The design must prevent the inflatable lapbelt from being either incorrectly buckled or incorrectly installed so that the inflatable lapbelt would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant, and will provide the required head injury protection.

4. It must be shown that the inflatable lapbelt system is not susceptible to inadvertent deployment as a result of ''wear and tear'' or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings) likely to be experienced in service.

5. Deployment of the inflatable lapbelt must not introduce injury mechanisms to the seated occupant, or result in injuries that could impede rapid egress. This assessment should include consideration of an occupant who is in the brace position when it deploys and an occupant whose belt is loosely fastened.

6. It must be shown that an inadvertent deployment that could cause injury to a standing or sitting person is improbable.

7. It must be shown that inadvertent deployment of the inflatable lapbelt during the most critical part of the flight will either not cause a hazard to the airplane or is extremely improbable.

8. It must be shown that the inflatable lapbelt will not impede rapid egress of occupants 10 seconds after its deployment.

9. The system must be protected from lightning and HIRF. The threats specified in Special Condition No. 25–ANM–109 are incorporated by reference for the purpose of measuring lightning and HIRF protection. For the purposes of complying with HIRF requirements, the inflatable lapbelt system is considered a ''critical system'' if its deployment could have a hazardous effect on the airplane; otherwise it is considered an ''essential'' system.

10. The inflatable lapbelt must function properly after loss of normal aircraft electrical power, and after a transverse separation of the fuselage at the most critical location. A separation at the location of the lapbelt does not have to be considered.

11. It must be shown that the inflatable lapbelt will not release hazardous quantities of gas or particulate matter into the cabin.

12. The inflatable lapbelt installation must be protected from the effects of fire such that no hazard to occupants will result.

13. There must be a means for a crewmember to verify the integrity of the inflatable lapbelt activation system prior to each flight or it must be demonstrated to reliably operate between inspection intervals.

Issued in Renton, Washington, on August 16, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–22118 Filed 8–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–154–AD; Amendment 39–12871; AD 2002–17–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 727 series airplanes. This action requires a one-time inspection to find discrepancies of the wire bundles and hydraulic tubing in the aft stairwell area, and corrective action, if necessary. This action is necessary to find and fix such discrepancies, which could result in electrical arcing between the wiring and hydraulic tubing, and consequent fire and damage to adjacent structure. This action is intended to address the identified unsafe condition.

DATES: Effective September 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 16, 2002.

Comments for inclusion in the Rules Docket must be received on or before October 29, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–154–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–154–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Kenneth Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2673; fax (425) 227–1181.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4243, fax (425) 687–4248. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft.

SUPPLEMENTARY INFORMATION: The FAA received a report that, during a through-flight check shortly after the landing of a Boeing Model 727–200F series airplane, a crew member on board the airplane saw smoke in the left aft stairwell area. Evidence of overheating (molten aluminum) and fire damage was found between body stations 1203 and 1223, in addition to on the upper and lower torque boxes outboard and above the standby hydraulic reservoir. Investigation revealed the fire was caused by an electrical wire bundle chafing and subsequently arcing against a hydraulic system ''A'' case drain return line tube. The wire bundle provides electrical power to the standby hydraulic pump. A hole was burned in the aft side of the tube and in the back of a bend on a hydraulic reservoir pressurization tube located four feet above the drain return line tube. Such discrepancies of the wire bundle, if not found and fixed, could result in electrical arcing between the wiring and hydraulic tubing, and consequent fire and damage to adjacent structure.

Similar Models

All Boeing Model 727 series airplanes have the same configuration of the aft stairwell area as that on the affected Model 727–200F series airplane. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 727–29A0068, dated May 30, 2002. The service bulletin describes procedures for a one-time inspection to find discrepancies (including inadequate clearance between the wire bundles and hydraulic tubing and/or structure, missing clamps, chafing, fire damage to structure, or damage to wire bundles) of the wire bundles and hydraulic tubing (wire bundles W344 and W338, and hydraulic system ''A'' case drain line tube, part number 65–17844–146) in the aft stairwell area, and corrective action, if necessary. The corrective action includes repositioning of the wire bundles and clamps to ensure a minimum clearance of 0.25 inch between the wire bundles and hydraulic tubing and/or structure and installing clamps; repairing or replacing any damaged wiring and tubing; inspecting the adjacent structural area for fire damage, and repairing any damage.

The service bulletin refers to Boeing Standard Wiring Practices Manuals 20–10–11, 20–10–12, and 20–10–13 for repair or replacement of any damaged wiring. The service bulletin also refers to the 727 Airplane Maintenance Manual for repair or replacement of any damaged hydraulic tubing or structure. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Service Information and This AD

The service bulletin refers only to a ''visual inspection'' for discrepancies of the wire bundles and hydraulic tubing. We have determined that the procedures in the service bulletin should be described as a ''general visual inspection.'' Note 2 has been included in this AD to define this type of inspection.

The service bulletin recommends doing the inspection ''at the earliest maintenance opportunity when facilities and manpower are available.'' However, we have determined that such a compliance time will not ensure that operators address the unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the significant impact on scheduling and cost for the large fleet of airplanes which must be inspected, and adequate time and availability of facilities for safe and accurate accomplishment of the inspection. In light of all of these factors, we find a 120-day compliance time for doing the inspection to be warranted in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–154–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–17–05 Boeing: Amendment 39–12871. Docket 2002–NM–154–AD.

Applicability: All Model 727 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To find and fix discrepancies of the wire bundles and hydraulic tubing in the aft stairwell area, which could result in electrical arcing between the wiring and hydraulic tubing and consequent fire and damage to adjacent structure, accomplish the following:

General Visual Inspection/Corrective Action

(a) Within 120 days after the effective date of this AD: Do a general visual inspection to find discrepancies (including inadequate clearance between the wire bundles and hydraulic tubing and/or structure, missing clamps, chafing, fire damage to structure, or damage to wire bundles) of the wire bundles and hydraulic tubing in the aft stairwell area, per the Work Instructions of Boeing Alert Service Bulletin 727–29A0068, dated May 30, 2002.

(1) If no discrepancy is found, no further action is required by this AD.

(2) If any discrepancy is found, before further flight, fix the discrepancy (includes repositioning of the wire bundles and clamps to ensure a minimum clearance of 0.25 inch between the wire bundles and hydraulic tubing and/or structure and installing clamps; repairing or replacing any damaged wiring and tubing; if evidence of fire damage, inspecting adjacent structural area for damage, and repairing any damage), per Figure 1 of the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 727–29A0068, dated May 30, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on September 16, 2002.

Issued in Renton, Washington, on August 22, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–22007 Filed 8–29–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–11–AD; Amendment 39–12870; AD 2002–15–01 R1]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Models HK 36 R ''Super Dimona'', HK 36 TC, HK 36 TS, HK 36 TTC, HK 36 TTC–ECO, HK 36 TTC–ECO (Restricted Category), and HK 36 TTS Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment clarifies information contained in Airworthiness Directive (AD) 2002–15–01, which currently requires you to inspect the long aileron push rods in both wings for damage and modify the push rods on all Diamond Aircraft Industries GmbH (Diamond) Models H–36 ''Dimona'', HK 36 R ''Super Dimona'', HK 36 TC, HK 36 TS, HK 36 TTC, HK 36 TTC-ECO, HK 36 TTC-ECO (Restricted Category), and HK 36 TTS sailplanes. The Model H–36 ''Dimona'' sailplane has a different flight control system than the rest of the affected sailplanes. This particular flight control system makes it impossible for the Model H–36 ''Dimona'' sailplanes to be in compliance with AD 2002–15–01. This document deletes these sailplanes from the AD applicability. The actions specified by this AD are intended to detect and correct damage in the long aileron push control rods, which could result in failure of the aileron push rods and decreased control. Such failure could lead to aeroelastic flutter.

DATES: This AD becomes effective on September 3, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of September 3, 2002.

ADDRESSES: You may get the service information referenced in this AD from Diamond Aircraft Industries GmbH, N.A. Otto-Strasse 5, A–2700 Wiener Neistadt, Austria; telephone: 43 2622 26 700; facsimile: 43 2622 26 780. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–11–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Prior Action Did FAA Take on This Subject?

We issued AD 2002–15–01, Amendment 39–12829 (67 FR 47680, July 22, 2002), in order to detect and correct damage in the long aileron push control rods on all Diamond Models H–36 ''Dimona'', HK 36 R ''Super Dimona'', HK 36 TC, HK 36 TS, HK 36 TTC, HK 36 TTC–ECO, HK 36 TTC–ECO (Restricted Category), and HK 36 TTS

sailplanes. This AD currently requires you to inspect the long aileron push rods in both wings for damage and modify the push rods.

What Has Happened To Necessitate Further AD Action?

The Model H–36 ''Dimona'' sailplane has a different flight control system than the rest of the affected sailplanes. This particular flight control system makes it impossible for the Model H–36 ''Dimona'' sailplanes to be in compliance with AD 2002–15–01.

Consequently, FAA sees a need to clarify AD 2002–15–01 to assure that every owner/operator of the affected sailplanes is able to comply with the AD action. This is possible by removing the Model H–36 ''Dimona'' sailplanes from the AD applicability.

Correction of Publication

What Is the Purpose of This Document?

This document clarifies AD 2002–15–01 by removing the Model H–36 ''Dimona'' sailplanes from the AD applicability and adds the amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

Is It Necessary To Seek Public Input?

Since this action only clarifies the intent of the compliance time, it has no adverse economic impact and imposes no additional burden on any person than would have been necessary to comply with AD 2000–23–01. Therefore, FAA has determined that prior notice and opportunity for public comment are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–15–01, Amendment 39–12829 (67 FR 47680, July 22, 2002), and by adding a new AD to read as follows:

2002–15–01 R1 Diamond Aircraft Industries Gmbh: Amendment 39–12870; Docket No. 2002–CE–11–AD; Revises AD 2002–15–01, Amendment 39–12829.

(a) *What sailplanes are affected by this AD?* This AD affects Models HK 36 R ''Super Dimona'', HK 36 TC, HK 36 TS, HK 36 TTC, HK 36 TTC-ECO, HK 36 TTC-ECO (Restricted Category), and HK 36 TTS sailplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the sailplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct damage in the long aileron push control rods, which could result in failure of the aileron push rods and decreased control. Such failure could lead to aeroelastic flutter.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the long aileron push rods in both wings.	Within the next 10 hours time-in-service (TIS) after September 3, 2002 (the effective date of this AD), unless already accomplished.	In accordance with paragraph 1.8 Measures of Diamond Aircraft Industries GmbH Service Bulletin No. MSB36–72, dated Febraury 1, 2002; Diamond Aircraft Industries GmbH Work Instruction No. WI–MSB36–72, dated February 1, 2002; and the applicable sailplane maintenance manual.
(2) If any long aileron push rods are found damaged during the inspection required in paragraph (d)(1) of this AD, modify the push rods.	Before further flight, after the inspection required in paragraph (d)(1) of this AD, unless already accomplished.	In accordance with paragraph 1.8 Measures of Diamond Aircraft Industries GmbH Service Bulletin No. MSB36–72, dated Febraury 1, 2002; Diamond Aircraft Industries GmbH Work Instruction No. WI–MSB36–72, dated February 1, 2002; and the applicable sailplane maintenance manual.
(3) If no damage is found during the inspection required in paragraph (d)(1), modify the push rods.	Within the next 25 hours TIS after September 3, 2002 (the effective date of this AD), unless already accomplished.	In accordance with paragraph 1.8 Measures of Diamond Aircraft Industries GmbH Service Bulletin No. MSB36–72, dated February 1, 2002; Diamond Aircraft Industries GmbH Work Instruction No. WI–MSB36–72, dated February 1, 2002; and the applicable sailplane maintenance manual.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the sailplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your sailplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Diamond Aircraft Industries GmbH Service Bulletin No. MSB36–72, dated February 1, 2002; and Diamond Aircraft Industries GmbH Work Instruction No. WI-MSB36–72, dated February 1, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Diamond Aircraft Industries GmbH, N.A. Otto-Strasse

5, A–2700 Wiener Neistadt, Austria; telephone: 43 2622 26 700; facsimile: 43 2622 26 780. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in Austrian AD No. 111, dated February 26, 2002.

(i) *Does this AD action affect any existing AD actions?* This amendment revises 2002–15–01, Amendment 39–12829 (67 FR 47680, July 22, 2002) .

(j) *When does this amendment become effective?* This amendment becomes effective on September 3, 2002.

Issued in Kansas City, Missouri, on August 21, 2002.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–22129 Filed 8–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–35–AD; Amendment 39–12869; AD 2002–17–04]

RIN 2120–AA64

Airworthiness Directives; Ballonbau Worner GmbH Model K–630/1–Stu Manned Free Gas Balloons

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Ballonbau Worner GmbH (Ballonbau) Model K–630/1–Stu manned free gas balloons. This AD requires you to replace the PVC tubes that cover the steelwire loops of the basket with an electrostatic conductive braided rope. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent the chance of an electrostatic charge buildup between the steelwire loops of the basket and the balloon envelope, which could result in ignition of combustible lifting gas fumes in the balloon envelope. Such a condition could lead to gas explosion and fire.

DATES: This AD becomes effective on September 30, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of September 30, 2002.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before October 10, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–35–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: 9–ACE–7–Docket@faa.gov. Comments sent electronically must contain ''Docket No. 2000–CE–35–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get the service information referenced in this AD from Ballonbau Worner GmbH, Zirbelstr 57c, 86154 Augusburg, Federal Republic of Germany; telephone: ++ 49 821–421590; facsimile: ++ 49 821–419641. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–35–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roger Chudy, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4140; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified FAA that an unsafe condition may exist on all Ballonbau Model K–630/1–Stu manned free gas balloons. The LBA reports the potential of an electrostatic build up between the steelwire loops of the basket and the balloon envelope.

Ballonbau has designed an electrostatic conductive braided rope to address this condition.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not prevented, could result in ignition of combustible lifting gas fumes in the balloon envelope. Such a condition could lead to gas explosion and fire.

Is There Service Information That Applies to This Subject?

Ballonbau has issued Technical Note Nr. 8002–13, dated January 14, 2000.

This service information includes procedures for removing the PVC tubes that cover the steelwire loops of the basket and installing an electrostatic conductive braided rope.

What Action Did the LBA Take?

The LBA classified this service bulletin as mandatory and issued German AD Number 2000–063, dated February 24, 2000, in order to ensure the continued airworthiness of these balloons in Germany.

Was This in Accordance With the Bilateral Airworthiness Agreement?

This balloon model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This AD

What Has FAA Decided?

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Ballonbau Model K–630/1–Stu manned free gas balloons of the same type design;

—The actions specified in the previously-referenced service information (as specified in this AD) should be accomplished on the affected balloons; and

—AD action should be taken in order to correct this unsafe condition.

What Does This AD Require?

This AD requires you to incorporate the actions in the previously-referenced service bulletin.

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

Since this AD action does not affect any balloon that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and opportunity for public prior

comment are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

None of the Ballonbau Model K–630/1–Stu manned free gas balloons affected by this action are on the U.S. Register. All balloons included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers this rule necessary to ensure that the unsafe condition is addressed in the event that any of these subject balloons are imported and placed on the U.S. Register.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This AD I Should Pay Attention to?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2000-CE–35-AD.'' We will date stamp and mail the postcard back to you.

Compliance Time of this AD

What Is the Compliance Time of This AD?

The compliance time of this AD is within the next 30 days after the effective date of this AD.

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-In-Service (TIS)?

This unsafe condition is not a result of the number of times the balloon is operated. The chance of this situation occurring is the same for a balloon with 10 hours time-in-service (TIS) as it would be for a balloon with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all balloons in a reasonable time period.

Regulatory Impact

Does This AD Impact Various Entities?

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

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2002–17–04 Ballonbau Worner Gmbh: Amendment 39–12869; Docket No. 2000–CE–35–AD

(a) *What balloons are affected by this AD?* This AD affects Model K–630/1–Stu manned free gas balloons, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the balloons identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the chance of an electrostatic charge buildup between the steelwire loops of the basket and the balloon envelope, which could result in ignition of combustible lifting gas fumes in the balloon envelope. Such a condition could lead to gas explosion and fire.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Remove the PVC tubes on the steelwire loops of the basket and install an electrostatic conductive braided rope.	Within the next 30 days after September 30, 2002 (the effective date of this AD).	In accordance with Ballonbau Worner GmbH Technical Note Nr. 8002–13, dated January 14, 2000.
(2) Do not install PVC tubes on the steelwire loops of the basket.	As of September 30, 2002 (the effective date of this AD).	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Roger Chudy, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4140; facsimile: (816) 329–4090.

(g) *What if I need to fly the balloon to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your balloon to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Ballonbau Worner GmbH Technical Note Nr. 8002–13, dated January 14, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Ballonbau Worner GmbH, Zirbelstr 57c, 86154 Augusburg, Federal Republic of Germany; telephone: ++ 49 821–421590; facsimile: ++ 49 821–419641. You may view copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in German AD 2000–063, dated February 24, 2000.

(i) *When does this amendment become effective?* This amendment becomes effective on September 30, 2002.

Issued in Kansas City, Missouri, on August 21, 2002.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–22128 Filed 8–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–195–AD; Amendment 39–12872; AD 2002–17–06]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 airplanes, that currently requires repetitive general visual inspections of the power feeder cables, terminal strip, fuseholder, and fuses of the galley load control unit (GLCU) within the No. 3 bay electrical power center to detect damage; and corrective actions, if necessary. That AD also currently requires replacement of the electrical wiring of the galley in the electrical power center in bays 1, 2, and 3 with larger gage cable assemblies, which terminates the repetitive inspections. This amendment removes the replacement requirement and reinstates the repetitive inspections and corrective actions if necessary. This amendment is prompted by information from the airplane manufacturer that accomplishment of the replacement required by the existing AD could result in additional wire chafing damage in the electrical power center (EPC) due to insufficient clearance from structure. The actions specified in this AD are intended to prevent such chafing, and consequent arcing and smoke and fire in the EPC, and to prevent damage to the wire assembly terminal lugs and overheating of the power feeder cables on the No. 3 and No. 4 galley load control unit, which could result in smoke and fire in the center accessory compartment.

DATES: Effective September 16, 2002.

The incorporation by reference of certain publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 4, 2000 (64 FR 71001, December 20, 1999).

Comments for inclusion in the Rules Docket must be received on or before October 29, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–195–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–195–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Writer/Editor; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: On July 2, 2002, the FAA issued AD 2002–14–05, amendment 39–12805 (67 FR 47640, July 19, 2002), applicable to certain McDonnell Douglas Model MD–11 airplanes, to require repetitive general visual inspections of the power feeder cables, terminal strip, fuseholder, and fuses of the galley load control unit (GLCU) within the No. 3 bay electrical power center to detect damage; and corrective actions, if necessary. That AD also requires replacement of the

electrical wiring of the galley in the electrical power center in bays 1, 2, and 3 with larger gage cable assemblies, which terminates the repetitive inspections. That action was prompted by the FAA's determination that further rulemaking action was necessary to mandate the terminating action. The actions required by that AD are intended to prevent damage to the wire assembly terminal lugs and overheating of the power feeder cables on the No. 3 and 4 GLCU, which could result in smoke and fire in the center accessory compartment.

Actions Since Issuance of Previous AD

Since the issuance of AD 2002–14–05, the airplane manufacturer has informed the FAA that accomplishment of the replacement specified in Boeing Service Bulletin MD11–24–184, dated February 22, 2001, which is required by paragraph (c) of that AD, could result in additional wire chafing damage in the electrical power center (EPC) due to insufficient clearance from structure. Such chafing, if not corrected, could cause arcing and consequent smoke and fire in the electrical power center. Boeing also has informed us that it is planning to revise Boeing Service Bulletin MD11–24–184.

FAA's Determination

In light of the identified unsafe condition, we have determined that the replacement required by paragraph (c) of AD 2002–14–05 is no longer acceptable as terminating action for the repetitive inspections required by paragraphs (a) and (b) of that AD, and that those repetitive inspections must continue to be done, until a new terminating action is developed, approved, and available.

Explanation of Relevant Service Information

We previously reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A160, Revision 01, dated November 11, 1999, which describes procedures for repetitive general visual inspections of the power feeder cables, terminal strip, fuseholder, and fuses of the GLCU within the No. 3 bay electrical power center; and corrective actions, if necessary. The corrective actions include replacement of power feeder cables, fuseholder, and/or fuses, as applicable, with new parts.

We also previously reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A160, dated August 30, 1999, which describes the same procedures as Revision 01 of the service bulletin. However, the inspection is only accomplished once, rather than repetitively. Therefore, this service bulletin is also provided as a source of accomplishment instructions for the required general visual inspections and corrective actions.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 2002–14–05 to require repetitive general visual inspections of the power feeder cables, terminal strip, fuseholder, and fuses of the GLCU within the No. 3 bay electrical power center to detect damage; and corrective actions, if necessary. The actions will be required to be accomplished in accordance with the service bulletins described previously.

Interim Action

This is considered to be interim action. The airplane manufacturer has advised that it currently is developing a replacement that will address the unsafe condition addressed by this AD. Once this replacement is developed, approved, and available, we may consider additional rulemaking.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–195–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12805 (67 FR 47640, July 19, 2002), and by adding a new airworthiness directive (AD), amendment 39–12872, to read as follows:

2002–17–06 McDonnell Douglas: Amendment 39–12872. Docket 2002–NM–195–AD. Supersedes AD 2002–14–05, Amendment 39–12805.

Applicability: Model MD–11 airplanes, as listed in Boeing Service Bulletin MD11–24–184, dated February 22, 2001; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing damage to the wire assembly, and consequent arcing and smoke and fire in the electrical power center, and to prevent damage to the wire assembly terminal lugs and overheating of the power feeder cables on the No. 3 and No. 4 galley load control unit (GLCU), which could result in smoke and fire in the center accessory compartment, accomplish the following:

Initial Inspection

(a) Do a general visual inspection of the power feeder cables, terminal strip, fuseholder, and fuses of the GLCU within the No. 3 bay electrical power center to detect damage (*i.e.*, discoloration of affected parts or loose attachments), per McDonnell Douglas Alert Service Bulletin MD11–24A160, dated August 30, 1999; or Revision 01, dated November 11, 1999; at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes on which the replacement required by paragraph (c) of AD 2002–14–05, amendment 39–12805, has been done: Inspect within 60 days after the effective date of this AD.

(2) For airplanes on which the replacement required by paragraph (c) of AD 2002–14–05 has NOT been done: Inspect within 600 flight hours from the last inspection required by AD 2002–14–05, or within 60 days after the effective date of this AD, whichever occurs later.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

No Damage Detected: Repetitive Inspections

(b) If no damage is detected during any inspection required by this AD, repeat the general visual inspection every 600 flight hours.

Damage Detected: Replacement and Repetitive Inspections

(c) If any damage is detected during any inspection required by this AD, before further flight, replace the power feeder cables, fuseholder, and/or fuses, as applicable, with new parts, per McDonnell Douglas Alert Service Bulletin MD11–24A160, dated August 30, 1999; or Revision 01, dated November 11, 1999. Repeat the general visual inspection every 600 flight hours.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

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

Incorporation by Reference

(f) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A160, dated August 30, 1999; or McDonnell Douglas Alert Service Bulletin MD11–24A160, Revision 01, dated November 11, 1999. The incorporation by reference of those documents was approved previously by the Director of the Federal Register as of January 4, 2000 (64 FR 71001, December 20, 1999). Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on September 16, 2002.

Issued in Renton, Washington, on August 23, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–22127 Filed 8–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30327; Amdt. No. 437]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs

Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: PO Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on August 23, 2002.

James J. Ballough,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, October 3, 2002.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

§§ 95.6001, 95.6070, 95.6081, 95.6095, 95.6214, 95.6267, 95.6300, 95.6339, 95.6385, 95.6433, 95.6445, 95.6537, 95.6552, 95.7001, and 95.7072 [Amended]

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 437 Effective Date: October 3, 2002]

From	To	MEA
§ 95.6001 Victor Routes-U.S.		
§ 95.6001 VOR Federal Airway 1 is Amended to Read in Part		
Zaggy, NC FIX *1500—MOCA	Cofield, NC VORTAC	*3000
§ 95.6070 VOR Federal Airway 70 is Amended to Read in Part		
Pears, NC FIX *2000—MOCA	Cofield, NC VORTAC	*3000
§ 95.6081 VOR Federal Airway 81 is Amended to Read in Part		
Black Forest, CO VORTAC *9500—MRA **10000—MOCA	*Hohum, CO FIX	**13000
§ 95.6095 VOR Federal Airway 95 is Amended to Read in Part		
Gorje, CO FIX *13100—MCA Hohum FIX S BND *9500—MRA **16200—MOCA	*Hohum, CO Fix	**17000
§ 95.6214 VOR Federal Airway 214 is Amended to Read in Part		
Dupont, DE VORTAC *1700—MOCA	Stefe, PA FIX	*3000
Stefe, PA FIX *2500—MOCA	Yardley, PA VOR/DME	*6000

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 437 Effective Date: October 3, 2002]

From	To	MEA
§ 95.6267 VOR Federal Airway 267 is Amended to Read in Part		
Craig, FL VORTAC	Baxly, GA FIX	3000
§ 95.6300 VOR Federal Airway 300 is Amended to Read in Part		
U.S. Canadian Border, *10000—MRA **5700—MOCA	*Campo, ME FIX	**7200
§ 95.6339 VOR Federal Airway 339 is Amended to Read in Part		
Trent, KY FIX	Falmouth, KY VOR/DME	3500
§ 95.6385 VOR Federal Airway 385 is Amended to Read in Part		
Lubbock, TX VORTAC *4600—MOCA	*Wagun, TX FIX	*8000
Wagun, TX FIX *3800—MOCA	Abilene, TX VORTAC	*8000
§ 95.6433 VOR Federal Airway 433 is Amended to Read in Part		
Dupont, DE VORTAC *1700—MOCA	Stefe, PA FIX	*3000
Stefe, PA FIX *2500—MOCA	Yardley, PA VOR/DME	*6000
§ 95.6445 VOR Federal Airway 445 is Amended to Read in Part		
Dupont, DE VORTAC *1700—MOCA	Stefe, PA FIX	*3000
Stefe, PA FIX *2500—MOCA	Yardley, PA VOR/DME	*6000
§ 95.6537 VOR Federal Airway 537 is Amended to Read in Part		
Presk, FL FIX *2000—MOCA	Cermo, FL FIX	*8000
§ 95.6552 VOR Federal Airway 552 is Amended to Read in Part		
Lake Charles, LA VORTAC	Hatha, LA FIX	2000
Hatha, LA FIX	Lafayette, LA VORTAC	2800

From	To	MEA	MAA
§ 95.7001 JET ROUTES **§ 95.7072 JET ROUTE NO. 72**			
Peach Springs, AZ VORTAC #MEA is Established With a Gap in Navigation Signal Coverage.	Gallup, NM VORTAC	#18000	45000

[FR Doc. 02–22116 Filed 8–29–02; 8:58 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

[T.D. 02–51]

RIN 1515–AD01

Re-Use of Air Waybill Number on Air Cargo Manifest

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations pertaining to air commerce to provide that once an air waybill number is used on an air cargo manifest, one year must elapse before the same air waybill number may be used on another air cargo manifest. Current regulations prohibit the re-use of an air waybill number for three years after it is used on an air cargo manifest. This document also specifies that air cargo manifests must reference an 11-

digit air waybill number for each air waybill it covers.

EFFECTIVE DATE: September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Scholtens, Trade Programs, Office of Field Operations: (202) 927–3459.

SUPPLEMENTARY INFORMATION:

Background

The requirements for aircraft entry and entry documents are set forth in subpart E of part 122 of the Customs Regulations (19 CFR Part 122; § 122.41 *et seq.*). Under § 122.41 of the regulations (19 CFR 122.41), all commercial aircraft coming to the United States from a foreign area (with certain exceptions not relevant here) must make entry. Section 122.48 (19 CFR 122.48) provides that an air cargo manifest covering all cargo on board must be filed with the general declaration for any aircraft required to make entry under § 122.41. Section 122.48(c) pertains to the air cargo manifest form (Customs Form 7509) and the information it must contain which includes an air waybill number for each air waybill covered by the manifest. The number of air waybills covered by the manifest depends on the number of air waybills that are associated with the cargo on board. This number will vary from aircraft to aircraft, depending on the number of shipments on board (including consolidated shipments).

Thus, whenever a commercial aircraft arrives from a foreign place and makes entry as required under the regulations, it must submit to Customs a manifest containing the appropriate air waybill numbers. (See also 19 U.S.C. 1431, 1433, 1434, 1644, and 1644a pertaining to vessel and air cargo manifests.)

Section 4.7a(c)(2)(iii), Customs Regulations (19 CFR 4.7a(c)(2)(iii)), concerning vessel manifests provides that bills of lading must have unique identifier numbers, that the numbers must be listed on vessel manifests, and that the identifier numbers may not be duplicated within a 3-year period. Section 122.2, Customs Regulations (19 CFR 122.2), provides that, except as otherwise provided for in the Customs Regulations, the customs laws and regulations applicable to vessels are also applicable to aircraft. (Section 122.2 implements 19 U.S.C. 1644a(b)(1)(E), under which Customs is authorized, by regulation, to apply to civil aircraft the laws and regulations concerning the entry and clearance of vessels.) Air waybills in the air commerce environment are analogous to bills of lading in the vessel commerce environment. Because the time frame in which an air waybill identifying number may be duplicated is not otherwise provided for in the Customs Regulations, § 4.7a(c)(2)(iii), in conjunction with § 122.2, sets the time frame; once an air waybill number is used on an air cargo manifest, that number may not be duplicated within a 3-year period.

Customs reconsidered the three-year restriction on the re-use of air waybill numbers and, on March 1, 2002, Customs published a notice of proposed rulemaking (NPRM) in the **Federal Register** (67 FR 9423) proposing that § 122.48(c), Customs Regulations, be amended to allow an air waybill number to be reused after only a one-year time period. In the NPRM, Customs explained that the change was being considered in conjunction with Customs efforts to improve its internal automated information systems relative to the tracking, archiving, and auditing of shipments by use of manifest numbers. Customs also noted that the huge volume of importations is affecting the availability of usable numbers for air cargo manifests. (The three-year restriction of § 4.7a(c)(2)(iii) on the re-use of bill of lading numbers was not proposed to be changed by this proposal.)

The NPRM also proposed to amend § 122.48(c) to specify that the air waybill number referenced on the air cargo manifest must be an 11-digit number. This number is based on a standard International Air Transport Association format.

Comments

The comment period set forth in the NPRM ended on April 30, 2002. Only one comment was received.

Comment: The comment recommended that Customs adjust its Automated Manifest System (AMS) programming to accommodate the proposed change for reuse of air waybill numbers from three years to one year.

Customs response: Customs is working on programing changes that will be operational by the time the amended regulation takes effect.

Conclusion

As the only comment received raised an issue that Customs is in the process of resolving, upon further consideration by Customs, this document adopts as final the amendments to the regulation that were proposed on March 1, 2002.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Regulatory Flexibility Act

Inasmuch as the amendment adopted in this document regarding the one-year time restriction on re-use of air waybill numbers represents a loosening of the restriction on importers' use of such numbers, it is certified, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this amendment to the Customs Regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices contributed in its development.

List of Subjects in 19 CFR Part 122

Air cargo, Air cargo manifest, Air carriers, Aircraft, Air transportation, Customs duties and inspection, Entry procedure.

Amendments to the Regulations

For the reasons stated in the preamble, part 122 of the Customs Regulations (19 CFR part 122) is amended as follows:

PART 122—AIR COMMERCE REGULATIONS

1. The general authority citation for part 122 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

* * * * *

2. Section 122.48 is amended by revising paragraph (c) to read as follows:

§ 122.48 Air cargo manifest.

* * * * *

(c) *Form.* The air cargo manifest, Customs Form 7509, must contain all required information regarding all cargo on board the aircraft, except that a more complete description of the cargo shipped may be provided by attaching to the manifest copies of the air waybills covering the cargo on board, including, if a consolidated shipment, any house air waybills. When copies of air waybills are attached, the statement ''Cargo as per air waybills attached'' must appear on the manifest. The manifest must reference an 11-digit air waybill number for each air waybill it covers. The air waybill number must not be used by the issuer for another air

waybill for a period of one year after issuance.

* * * * *

Robert C. Bonner,

Commissioner of Customs.

Approved: August 27, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–22224 Filed 8–29–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 132 and 163

[T.D. 02–50]

RIN 1515–AC83

Licenses for Certain Worsted Wool Fabrics Subject to Tariff-Rate Quota

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, without change, the interim rule amending the Customs Regulations that was published in the **Federal Register** on May 1, 2001, as T.D. 01–35. The interim rule set forth the form and manner by which an importer establishes that a valid license, issued under regulations of the U.S. Department of Commerce, is in effect for certain worsted wool fabric that is the subject of a tariff-rate quota. Such a license, issued by the U.S. Department of Commerce, is necessary in order to enable the importer to claim the in-quota rate of duty on the worsted wool fabric.

DATES: Final rule effective on August 30, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Fitzpatrick, Office of Field Operations, (202–927–5385).

SUPPLEMENTARY INFORMATION:

Background

Under section 501 of the Trade and Development Act of 2000 (the ''Act'') (Pub. L. 106–200, 114 Stat. 251; May 18, 2000), the Harmonized Tariff Schedule of the United States (HTSUS) was amended to establish a tariff-rate quota for certain worsted wool fabrics that are entered or withdrawn from warehouse for consumption, on or after January 1, 2001.

Generally, under a tariff-rate quota, the United States applies one tariff rate, known as the in-quota rate, to imports of a product up to a particular amount, known as the in-quota quantity, and another, higher rate, known as the over-quota rate, to imports of a product in excess of the given amount. The preferential, in-quota rate would be applicable to the product only to the extent that the aggregate in-quota quantity of the product that is entered or withdrawn for consumption is not exceeded during the quota year.

To establish the tariff-rate quota for worsted wool fabrics, subchapter 2 of Chapter 99, HTSUS, was amended by section 501(a) and (b) of the Act to add two subheadings, 9902.51.11 and 9902.51.12, respectively.

The two subheadings created by section 501(a) and (b) of the Act describe certain fabrics of worsted wool provided for in subheadings 5111.11.70, 5111.19.60, 5112.11.20 and 5112.19.90, HTSUS. Since the passage of the Act, the President issued Presidential Proclamation 7383 (December 1, 2000). The Annex to that Presidential Proclamation provided, in pertinent part, for the following HTSUS substitutions, effective on or after January 1, 2001:

Subheading 5112.11.20 is replaced by subheadings 5112.11.30 and 5112.11.60; and

Subheading 5112.19.90 is replaced by subheadings 5112.19.60 and 5112.19.95.

Further, it is noted that HTSUS subheadings 5111.11.70 and 5111.19.60 do not provide for worsted wool fabric so fabrics described in those subheadings would not meet the description of fabrics that could fall under the tariff rate quota.

Accordingly, the tariff rate quota is applicable to certain fabrics of worsted wool provided for in subheadings 5112.11.30, 5112.11.60, 5112.19.60 and 5112.19.95, HTSUS, that are described in and entered under subheadings 9902.51.11 and 9902.51.12, HTSUS.

Administration of Tariff-Rate Quota by U.S. Department of Commerce

In implementing the in-quota limits on the quantities of worsted wool fabric that may be entered or withdrawn for consumption subject to the reduced tariffs afforded by subheadings 9902.51.11 and 9902.51.12, the U.S. Department of Commerce was delegated the authority under section 501(e) of the Act to fairly apportion these in-quota quantities among those persons, including firms, corporations and other legal entities, in the United States, who cut and sew men's and boys' worsted wool suits, suit-type jackets and trousers. This delegation of authority to the Department of Commerce was effected by Presidential Proclamation No. 7383 of December 1, 2000.

Accordingly, the Department of Commerce issued regulations setting up a program for the allocation of the aggregate in-quota quantity established, respectively, for subheadings 9902.51.11 and 9902.51.12 (15 CFR 335.1–335.7; see **Federal Register** dated January 22, 2001 (66 FR 6459)).

In pertinent part, under this program, the usage of the quota is allocated to U.S. suit-makers by virtue of licenses issued to them by the Department of Commerce. Each license is issued for a stated quantity of fabric and is required to have a unique control number. A suit-maker who has been issued such a license (a licensee) may enter worsted wool fabric under subheading 9902.51.11 or 9902.51.12 at the related in-quota rate of duty, up to the amount authorized in the license.

However, if the importer of record is not the licensee, the importer must have received an authorization from the licensee to act on its behalf, in order to be entitled to the in-quota rate of duty. The licensee may only authorize an importer to import fabric under the license on its behalf by making such an authorization in writing or by an electronic notice to the importer and by providing a copy of such authorization to the Department of Commerce. This authorization must include the unique control number of the license; it must specifically cover the fabric being imported; and it must be in the possession of the importer at the time of filing the entry summary or warehouse withdrawal for consumption (Customs Form 7501), or its electronic equivalent, in order for the importer to be eligible for the applicable in-quota rate of duty.

Corresponding Customs Rulemaking

In accordance with the rulemaking of the Department of Commerce, Customs issued an interim rule that was published in the **Federal Register** (66 FR 21664) on May 1, 2001, as T.D. 01–35. The interim rule added a new § 132.18 to the Customs Regulations (19 CFR 132.18) in order to prescribe the form and manner by which an importer establishes that a valid license exists for worsted wool fabric subject to the tariff-rate quota that is entered under HTSUS subheading 9902.51.11 or 9902.51.12. In particular, the unique control number assigned to the license must be referenced on the entry summary or warehouse withdrawal for consumption, or its electronic equivalent, in order to entitle the importer to claim the in-quota rate of duty on the worsted wool fabric.

In addition, the interim rule revised the Interim (a)(1)(A) List set forth as an Appendix to part 163, Customs

Regulations (19 CFR part 163, Appendix) to make reference to the license or written authorization required under new § 132.18. The (a)(1)(A) List provides a listing of the records and information required for the entry of merchandise.

A document published in the **Federal Register** (66 FR 27453) on May 17, 2001, set forth a correction to the interim rule regarding its effective date. As noted above, the rule applies to products that are entered, or withdrawn from warehouse, for consumption on or after January 1, 2001.

No comments were received from the public in response to the interim rule, and Customs has now determined to adopt the interim rule as a final rule without change.

The Regulatory Flexibility Act and Executive Order 12866 and Inapplicability of Delayed Effective Date

This final rule implements a preferential tariff benefit in favor of the importing public; it provides a necessary and reasonable means for carrying out this preferential tariff benefit; and it closely parallels existing regulatory provisions that implement similar trade preference programs. Accordingly, it has been determined, pursuant to 5 U.S.C. 553(d)(3), that a delayed effective date is not required. Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Nor does this final rule result in a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collections of information concerning the interim rule had already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1515–0065 (Entry summary and continuation sheet) and 1515–0124 (General recordkeeping and record production requirements). The interim rule did not make any material change to the existing approved information collections.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

List of Subjects

19 CFR Part 132

Customs duties and inspection, Quotas, Reporting and recordkeeping requirements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, the interim rule amending parts 132 and 163, Customs Regulations (19 CFR parts 132 and 163), which was published in the **Federal Register** at 66 FR 21664 on May 1, 2001, is adopted as a final rule without change.

Robert C. Bonner,

Commissioner of Customs.

Approved: August 26, 2002.

Gordana S. Earp,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–22225 Filed 8–29–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF DEFENSE

National Imagery and Mapping Agency

32 CFR Part 320

[NIMA Instruction 5500.7R1]

Privacy Act; Implementation

AGENCY: National Imagery and Mapping Agency, DoD.

ACTION: Final rule.

SUMMARY: The National Imagery and Mapping Agency (NIMA) is adding an exemption rule to an existing system of records. The exemption will increase the value of the system of records for law enforcement purposes, and will protect the privacy of individuals identified in the system of records.

EFFECTIVE DATE: August 6, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Willess, Associate General Counsel, at (301) 227–2953.

SUPPLEMENTARY INFORMATION: The proposed rule was published on June 4, 2002, at 67 FR 38448. No comments were received from the public; therefore, NIMA is adopting the rule as final.

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 320

Privacy.

Accordingly, 32 CFR part 320 is amended as follows:

1. The authority citation for 32 CFR part 320 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 9986 (5 U.S.C. 552a).

2. Section 320.12 is amended by adding paragraph (b) to read as follows:

§ 320.12 Exemptions.

* * * * *

(b) *System identifier and name:* B0210–07, Inspector General Investigative and Complaint Files.

(1) *Exemptions:* (i) Investigative material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and/or (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(2) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(3) *Reasons:* (i) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutable interest by the NIMA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NIMA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(vi) Consistent with the legislative purpose of the Privacy Act of 1974, NIMA will grant access to nonexempt material in the records being maintained. Disclosure will be governed by NIMA's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated in this paragraph. The decisions to release information from these systems will be made on a case-by-case basis.

Dated: August 26, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–22145 Filed 8–29–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles–Long Beach 02–014]

RIN 2115–AA97

Safety Zone; Ventura Offshore Gran Prix, Ventura, California

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of Pierpont Bay near Ventura, California, for the Ventura Offshore Gran Prix powerboat race on September 29, 2002. This temporary safety zone is necessary to provide for public safety in order to protect life and prevent property damage near the racecourse. Persons and vessels are prohibited from entering into or transiting through this safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 12 p.m. to 3 p.m. on September 29, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP Los Angeles–Long Beach 02–014 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office/Group Los Angeles–Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Rob Griffiths, Assistant Chief of Waterways Management Division, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Final dates and other logistical details for the event were not provided to the Coast Guard in time to draft and publish an NPRM or

a temporary final rule 30 days prior to the event, as the event would occur before the rulemaking process was complete. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to provide a safety zone to ensure the safety of the spectators and other vessels in the area.

Background and Purpose

The Coast Guard is establishing a temporary safety zone in the navigable waters of Pierpont Bay near Ventura, California, for the Ventura Offshore Gran Prix powerboat race on September 29, 2002. Pacific Offshore Powerboat Racing Association is sponsoring this offshore powerboat race. This race consists of approximately 40 offshore powerboats, operating at high speeds, racing along a multi-lap rectangular course located offshore Ventura between the hours of 12 p.m. and 3 p.m. The course is centered between the entrance to Ventura Harbor and Seaside Park, approximately ¼ nautical mile offshore.

The Coast Guard will close the waterway to all vessels and persons 30 minutes prior to the start of the race and will reopen the waterway approximately 30 minutes after the conclusion of the race if the Coast Guard determines that it is safe to do so. A broadcast notice to mariners will be issued for this event.

Persons and vessels are prohibited from entering into or transiting through this temporary safety zone during the race. By prohibiting persons and vessels from entering the waters near the racecourse, the risk of loss of life and damage to property will be significantly reduced.

U.S. Coast Guard personnel will enforce this safety zone. The Coast Guard may enlist the aid and cooperation of any federal, state, county, municipal, and/or private agency to assist in the patrol of this safety zone, which during this event may include the Coast Guard Auxiliary, Ventura Harbor Harbor Patrol, and Ventura Police.

Discussion of Rule

The following described area constitutes a temporary safety zone: all waters of Pierpont Bay near Ventura, California, from surface to bottom, encompassed by lines connecting points beginning at latitude 34°15′42″ N, longitude 119°16′40″ W; thence to 34°16′17″; N, 119°17′32″ W; thence to 34°16′17″ N, 119°19′25″ W; thence to 34°14′31″ N, 119°19′25″ W; thence to 34°14′31″ N, 119°16′40″ W; and thence returning to the point of origin. (Datum: NAD 83). This area is approximately 2 nautical miles wide and 2 nautical miles long and is geographically centered between Ventura Harbor and Seaside Park near Ventura, California.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). Due to the limited scope of the safety zone, the fact that vessel traffic can pass safely around the zone, and the short duration of the zone, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of the DOT is unnecessary.

Small Entities

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

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

This rule will possibly affect the following entities, some of which may be small entities: the owners and operators of private and commercial vessels intending to transit or anchor in the affected area. The impact to these entities would not, however, be significant since this zone will encompass only a small portion of the waterway for a limited period of time and vessels can safely navigate around the safety zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of

Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are establishing a temporary safety zone. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add a new § 165.T11–069 to read as follows:

§ 165.T11–069 Safety Zone; Ventura Offshore Gran Prix, Ventura, California.

(a) *Location.* The following described area constitutes a temporary safety zone: all waters of Pierpont Bay near Ventura, California, from surface to bottom, encompassed by lines connecting points beginning at latitude 34°15′42″ N, longitude 119°16′40″ W; thence to 34°16′17″ N, 119°17′32″ W; thence to 34°16′17″ N, 119°19′25″ W; thence to 34°14′31″ N, 119°19′25″ W; thence to 34°14′31″ N, 119°16′40″ W; and thence returning to the point of origin. (Datum: NAD 83).

(b) *Effective period.* This section is effective from 12 p.m. to 3 p.m. on September 29, 2002.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within the safety zone is prohibited unless authorized by the Coast Guard Captain of the Port, Los Angeles-Long Beach, or his or her designated representative.

(2) Persons desiring to transit the area of the safety zone may contact the Captain of the Port at telephone number (800) 221–8724 or the Patrol Commander on VHF–FM channel 16 (156.8 MHz). If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

Dated: August 23, 2002.

J.M. Holmes,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach, California.

[FR Doc. 02–22256 Filed 8–27–02; 4:55 pm]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS 162–1162a; FRL–7270–4]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the state of Kansas. This revision updates the state's air monitoring surveillance plan to include the particulate matter provisions EPA added to the Federal requirements in 1997. Approval of the state's submittal will ensure that it is consistent and current with the Federal requirements.

DATES: This direct final rule will be effective October 29, 2002, unless EPA receives adverse comments by September 30, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Kim Johnson, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Kim Johnson at (913) 551–7975.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information

such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

Section 110(a)(2)(C) of the CAA requires SIPs to contain provisions for ambient air quality monitoring and data reporting. The CAA also requires, in section 319, that EPA establish monitoring criteria to be followed uniformly across the nation and that a national monitoring network be established. The EPA promulgated regulations to implement section 319 on May 10, 1979. This rulemaking established part 58 of Title 40 of the Code of Federal Regulations, entitled ''Ambient Air Quality Surveillance.'' Section 58.20 establishes requirements for state ambient air quality monitoring networks.

On July 18, 1997 (62 FR 38763), we updated the provisions of 40 CFR 58.20 at the same time as we adopted new national ambient air quality standards (NAAQS) for ozone and particulate matter. In order to maintain consistency with the Federal requirements, Kansas subsequently revised its Section E—Monitoring Plan to address these revisions. This update has been submitted to us for approval as a revision to the Kansas SIP.

The state's submittal incorporates the provisions which were added in 1997. This includes § 58.20(f) pertaining to PM_{10} and $PM_{2.5}$ monitoring network descriptions, and § 58.20(g) pertaining to maintaining a list of all $PM_{2.5}$ monitoring locations including State and Local Air Monitoring Stations (SLAMS), National Air Monitoring Stations (NAMS), Photochemical Assessment Monitoring Stations (PAMS), and population-oriented Special Purpose Monitors (SPMs) that are included in the state's PM monitoring network description. Incorporation of these provisions into the state's monitoring plan makes it consistent with the Federal monitoring requirements.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Final Action: We are approving a revision to the Kansas SIP which updates its ambient air monitoring plan.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for

failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 29, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart R—Kansas

2. In § 52.870 the table in paragraph (e) is amended by adding an entry at the end of the table.

The addition reads as follows:

§ 52.870 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED KANSAS NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Comments
* *	*	*	*	*
Air monitoring plan	Statewide	1/16/02	August 30, 2002 [FR cite].	

Dated: August 12, 2002.

William A. Spratlin,

Acting Regional Administrator, Region 7.

[FR Doc. 02–22087 Filed 8–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7207–7]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Notice of Clarification of United States Avenue Burn site.

On July 22, 1999, the Environmental Protection Agency (''EPA'') promulgated a final rule adding the United States Avenue Burn site, located in Gibbsboro, NJ, on the National Priorities List (''NPL'') (64 FR 39878). On September 21, 1999, the Sherwin-Williams Company filed a petition for review of that rule in the United States Court of Appeals for the District of Columbia Circuit (''D.C. Circuit''). *Sherwin-Williams Company* v. *United States Environmental Protection Agency,* Case No. 99–1388 (D.C. Cir. 1999). EPA and Sherwin-Williams thereafter entered into negotiations to settle this litigation, and on July 10, 2002 the parties entered into a formal settlement agreement.

In response to this settlement agreement, the DC Circuit Court issued an order remanding the United States Avenue Burn listing decision to EPA on August 2, 2002. In accordance with the Court's remand order and the settlement agreement, EPA is providing notice clarifying that the United States Avenue Burn site, as listed on the NPL (40 CFR part 300, Appendix B), does not include the Railroad Track Area. However, the United States Avenue Burn site remains on the NPL.

FOR FURTHER INFORMATION CONTACT: Jennifer Griesert, phone (703) 603–8888, State, Tribal and Site Identification Center; Office of Emergency and Remedial Response (mail code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Dated: August 23, 2002.

Marianne Lamont Horinko,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 02–22229 Filed 8–29–02; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL SCIENCE FOUNDATION

45 CFR Part 672

Antarctic Conservation Act of 1978, Civil Monetary Penalties

AGENCY: National Science Foundation.

ACTION: Final rule with a request for comments.

SUMMARY: The National Science Foundation (NSF) is adjusting civil monetary penalties that may be imposed for violations of the Antarctic Conservation Act of 1978 to reflect inflation since the last effective adjustment.

DATES: This rule is effective September 30, 2002.

Comments, however, are welcome at any time and will be considered in making future revisions.

ADDRESSES: All comments should be addressed to: John Chester, Assistant General Counsel, Office of the General Counsel, Room 1265, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: John Chester on (703) 292–8060 (voice) and (703) 2926–9041 (facsimile)—those are not toll-free numbers—or by electronic mail as *jchester@nsf.gov* through INTERNET.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (104 Stat. 890; 28 U.S.C. 2461 note) as amended by the Debt Collection Improvement Act of 1996 [section 31001(s)(1) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104–134, approved 4/26/96] directs each Federal agency to adjust, by regulation, each civil monetary penalty provided by law within the jurisdiction of that agency to compensate for the effects of inflation. The only civil monetary penalties within the jurisdiction of the National Science Foundation are those imposed for violations of the Antarctic Conservation Act of 1978 (16 U.S.C. 2401 *et seq.*). On June 16, 1998 NSF published an amendment to its rules governing enforcement of that law adding a new section setting out the penalties for inadvertent and deliberate violations and adjusting those penalties for inflation as provided in the Debt Collection Improvement Act. The General Accounting Office recently informed the Foundation that the second adjustment made at that time exceeded the amount allowable under the cited statute. This amendment corrects that error by recognizing that the second adjustment was ineffective and therefore the initial adjustment remained in effect. It also adjusts the penalty amounts for violations occurring after August 31, 2002 to reflect the approximately nine percent inflation from June 1998, the year when the penalty was adjusted, through June 2001. Because of the rounding rules applicable to these adjustments, no change will be made to the penalty for knowing violations. This amendment also changes the language used to describe the two levels of violations to incorporate that used in the relevant section of the Antarctic Conservation Act [16 U.S.C. 2407(a)].

Future adjustments will be made at least once every four years as called for in the amended Debt Collection Improvement Act.

Because this action merely makes adjustments required by statute, public comments were not solicited prior to its issuance.

Determinations

Under the criteria set forth in Executive Order 12866 as amended by Executive Order 13258, that this rule is not a significant regulatory action requiring review by the Office of Information and Regulatory Affairs. Consequently, this rule is also not subject to Executive Orders 13045 and 13211.

The rule is not an economically significant rule or a major rule under the Congressional Review Act. The Congressional Review Act provides that agencies shall submit a report, including a copy of all final rules, to each House of Congress and the Comptroller General of the United States. The Foundation will submit this report, identifying this rule as non-major, upon the publication of this rule in the **Federal Register**.

The Unfunded Mandate Reform Act of 1995, in sections 202 and 205, requires that agencies prepare several analytic statements before proposing a rule that may result in annual expenditures of $100 million by State, local and Indian tribal governments, or by the private sector. As this rule will not result in expenditures of that magnitude, such statements are not necessary. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on a substantial number of small businesses.

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3501 *et seq.*, and its implementing regulations, 5 CFR Part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements. This action does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes as specified by Executive Order 13175 and accordingly is not subject to that Order. Finally, NSF has reviewed this rule in light of Section 2 of Executive Order 12778 and certifies that this rule meets the applicable standards provided in sections 2(a) and 2(b) of that order.

List of Subjects in 45 CFR Part 672

Administrative practice and procedure, Antarctica.

For the reasons set out in the preamble, 45 CFR Part 672 is amended as follows:

PART 672—ENFORCEMENT AND HEARING PROCEDURES; TOURISM GUIDELINES

1. The authority citation for Part 672 continues to read as follows:

Authority: 16 U.S.C. 2401 *et seq.*, 28 U.S.C. 2461 note

2. Revise § 672.24 to read as follows:

§ 672.24 Maximum civil monetary penalties for violations.

(a) For violations occurring before August 1, 1998, the maximum civil penalty that may be assessed under §§ 672.20(b) and 672.23(a) is set by the statute at $5,000 for any violation and $10,000 for knowing violations.

(b) For violations occurring between August 1, 1998 and August 31, 2002, the maximum civil penalty was adjusted under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) to $5,500 for any violation and $11,000 for knowing violations.

(c) For violations occurring after August 31, 2002, the maximum civil penalty is adjusted under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) to $6,500 for any violation and $11,000 for knowing violations.

National Science Foundation.

Dated: July 18, 2002.

Lawrence Rudolph,

General Counsel.

[FR Doc. 02–22152 Filed 8–29–02; 8:45 am]

BILLING CODE 7555–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 02–201; MM Docket No. 98–112, RM–9027, RM–9268, RM–9384]

Radio Broadcasting Services; Anniston and Asland, AL, and College Park, Covington, Milledgeville, and Social Circle, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: This document denies a Petition for Reconsideration and Motion to Reopen the Record filed by Preston Small directed to the *Memorandum Opinion and Order* in this proceeding which denied an earlier Petition for

Reconsideration and Request for Protection filed by Preston Small. *See* 66 FR 14862, March 4, 2001. With this action, the proceeding is terminated.

DATES: This denial is effective August 30, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 98–112, adopted July 1, 2002, and released July 25, 2002. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualixint@aol.com*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–22282 Filed 8–29–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 237

[DFARS Case 2001–D018]

Defense Federal Acquisition Regulation Supplement; Performance of Security Functions

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 1010 of the USA Patriot Act. Section 1010 provides an exception to the prohibition on contracting for security functions at a military installation or facility. The exception applies during the period of time that United States armed forces are engaged in Operation Enduring Freedom and 180 days thereafter.

EFFECTIVE DATE: August 30, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0289; facsimile (703) 602–0350. Please cite DFARS Case 2001–D018.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2465 prohibits DoD from entering into contracts for the performance of firefighting or security-guard functions at military installations or facilities, unless certain exceptions apply. Section 1010 of the USA Patriot Act (Public Law 107–56) adds another exception to this prohibition, to apply during the period of time that United States armed forces are engaged in Operation Enduring Freedom and 180 days thereafter. The additional exception permits award of contracts for security functions to proximately located local and State governments. This DFARS rule implements section 1010 of Public Law 107–56.

DoD published an interim rule at 67 FR 11438 on March 14, 2002. Two sources submitted comments on the interim rule, and both supported the rule. Therefore, DoD is converting the interim rule to a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to military installations and facilities and proximately located local and State governments.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 237

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Part 237, which was published at 67 FR 11438 on March 14, 2002, is adopted as a final rule without change.

[FR Doc. 02–22162 Filed 8–29–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 082202A]

Fisheries of the Exclusive Economic Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the fourth seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA was reached during the third seasonal apportionment.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 1, 2002, until 1200 hrs, A.l.t., October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228, or Andy.Smoker@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch allowance for the GOA trawl shallow-water species fishery, which is defined at § 679.21(d)(3)(iii)(A), was established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002, and 67 FR 34860, May 16, 2002) for the fourth season, the period September 1, 2002, through October 1, 2002, as 150 metric tons. Section 679.21(d)(5)(iv) specifies that if a seasonal apportionment of a halibut

PSC limit specified for trawl, hook-and-line, or pot gear is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from the respective apportionment for the next season during a current fishing year. Current data indicate that the Pacific halibut bycatch allowance for the fourth season was taken during the third seasonal allocation. Therefore, there is no fourth seasonal apportionment available for the GOA shallow-water species fishery by vessels using trawl gear.

Therefore, in accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the fourth seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA was reached during the third seasonal apportionment. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA, except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. The species and species groups that comprise the shallow-water species fishery are: pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species.''

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the fourth seasonal halibut bycatch allowance specified for the shallow water species fishery in the GOA, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 27, 2002.

Virginia M. Fay,

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

[FR Doc. 02–22260 Filed 8–29–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 169
Friday, August 30, 2002

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–78–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas DC–9–10, –20, –30, –40, and –50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas DC–9–10, –20, –30, –40, and –50 series airplanes. The existing AD requires a one-time visual inspection to determine the modification status of the corners of the forward lower cargo doorjamb; low-frequency eddy current inspections to detect cracks of the fuselage skin and doubler at all corners of the forward lower cargo doorjamb; various follow-on repetitive inspections; and modification, if necessary. This action would retain those requirements but would require certain high-frequency, rather than low-frequency, eddy current inspections for certain conditions. The actions specified by the proposed AD are intended to detect and correct cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 15, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–78–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–78–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 9, 1998, the FAA issued AD 98–08–24, amendment 39–10473 (63 FR 19180, April 17, 1998), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, and Model C–9 (military) airplanes, to require a one-time visual inspection to determine the modification status of the corners of the forward lower cargo doorjamb; low-frequency eddy current (LFEC) inspections to detect cracks of the fuselage skin and doubler at all corners of the forward lower cargo doorjamb; various follow-on repetitive inspections; and modification, if necessary. That action was prompted by reports of fatigue cracks found in the fuselage skin

and doubler at the corners of the forward lower cargo doorjamb. The requirements of that AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the manufacturer has advised the FAA of an error in the procedures for inspecting the modified or repaired corners of the forward lower cargo doorjamb. The service bulletin identified in AD 98–08–24 refers to the DC–9 Structural Repair Manual (SRM), which specified that those inspections be done using LFEC methods. The FAA and the manufacturer have determined that LFEC inspections would be inadequate to determine the type and extent of the cracking for the modified or repaired corners of the forward lower cargo doorjamb. The manufacturer instead recommends that those inspections be done using high-frequency eddy current (HFEC) methods for those modified or repaired corners. The SRM has been revised to specify use of the new inspection method.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Service Bulletin DC9–53–277, Revision 01, dated June 16, 1999. The original version of this service bulletin, dated September 30, 1996, was cited in AD 98–08–24 as the appropriate source of service information for accomplishment of certain required actions. The revised service bulletin refers to the revised SRM, which specifies HFEC rather than LFEC inspections of the modified or repaired corners. The remaining actions are unchanged. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Related Rulemaking

Accomplishment of the actions required by this AD constitutes terminating action for inspections of Principal Structural Element 53.09.001 (reference McDonnell Douglas Model DC–9 SID) required by AD 96–13–03, amendment 39–9671 (61 FR 31009, June 19, 1996).

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 98–08–24 to continue to require a one-time inspection to determine the modification status of all corners of the forward lower cargo doorjamb, various follow-on repetitive inspections, and modification if necessary; and to require HFEC (rather than the currently required LFEC) inspections to detect cracks of the fuselage skin and doubler at the modified or repaired corners of the forward lower cargo doorjamb. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed in the following section.

Differences Between Proposed AD and Service Bulletin

Although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Explanation of Changes to Existing Requirements

Paragraph (d) of AD 98–08–24 has been revised in this proposed AD to provide an additional compliance time variable for operators unable to determine the date of the modification, if accomplished.

The FAA has clarified the inspection requirement contained in the proposed AD. Whereas AD 98–08–24 requires a ''visual inspection,'' the FAA has revised this proposed AD to clarify that its intent is to require a ''general visual inspection.'' Additionally, new Note 4 has been added to this proposed AD to define that inspection.

The FAA has revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Cost Impact

There are approximately 899 airplanes of the affected design in the worldwide fleet. The FAA estimates that 622 airplanes of U.S. registry would be affected by this proposed AD.

The inspection that is currently required by AD 98–08–24, and retained in this proposed AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $60 per airplane.

Should an operator be required to accomplish an eddy current inspection, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of an eddy current inspection proposed by this AD is estimated to be $60 per airplane.

Should an operator be required to accomplish the modification, it would take approximately 14 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $936 or $2,807 per airplane, depending on the service kit purchased. Based on these figures, the cost impact of the modification required by this AD is estimated to be $1,776 or $3,647 per airplane.

No change to the parts cost or work hour estimate is anticipated as a result of the new actions included in this proposed AD.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10473 (63 FR 19180, April 17, 1998), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2001–NM–78–AD. Supersedes AD 98–08–24, Amendment 39–10473.

Applicability: Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; DC–9–21 airplanes; DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; DC–9–41 airplanes; and DC–9–51 airplanes; certificated in any category; as listed in McDonnell Douglas Service Bulletin DC9–53–277, Revision 01, dated June 16, 1999.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking in the fuselage skin or doubler at the corner of the forward lower cargo doorjamb, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Note 2: Where there are differences between the service bulletin and the AD, the AD prevails.

Note 3: This AD is related to AD 96–13–03, amendment 39–9671; and AD 94–03–01, amendment 39–8807. This AD will affect Principal Structural Element (PSE) 53.09.001 of the DC–9 Supplemental Inspection Document (SID).

One-time Inspection

(a) Prior to the accumulation of 48,000 total landings, or within 3,500 landings after May 22, 1998 (the effective date of AD 98–08–24, amendment 39–10473), whichever occurs later: Perform a one-time general visual inspection to determine if the corners of the forward lower cargo doorjamb have been modified.

Note 4: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Follow-On Actions: Unmodified Doorjamb

(b) If the general visual inspection required by paragraph (a) of this AD reveals that the corners of the forward lower cargo doorjamb have NOT been modified: Before further flight, perform a low-frequency eddy current (LFEC) or X-ray inspection to detect cracks of the fuselage skin and doubler at all corners of the forward lower cargo doorjamb, in accordance with McDonnell Douglas Service Bulletin DC9–53–277, dated September 30, 1996; or Revision 01, dated June 16, 1999. After the effective date of this AD, Revision 1 of the service bulletin must be used.

(1) If no cracking is detected during the LFEC or X-ray inspection required by this paragraph, accomplish the requirements of either paragraph (b)(1)(i) or (b)(1)(ii) of this AD.

(i) *Option 1.* Repeat the inspections as follows until the actions specified in paragraph (b)(1)(ii) of this AD is accomplished:

(A) If the immediately preceding inspection was conducted using LFEC techniques, conduct the next inspection within 3,500 landings; or

(B) If the immediately preceding inspection was conducted using X-ray techniques, conduct the next inspection within 2,850 landings.

(ii) *Option 2.* Before further flight, modify the corners of the forward lower cargo doorjamb, in accordance with the service bulletin. Within 28,000 landings after accomplishment of that modification, perform a high-frequency eddy current inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin. Repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(A) If no crack is detected on the skin adjacent to the modification during any HFEC inspection required by this paragraph: Repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(B) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by this paragraph: Before further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

(2) If any crack is found during any LFEC or X-ray inspection required by this paragraph and the crack is 2 inches or less in length: Before further flight, modify it in accordance with the service bulletin. Within 28,000 landings after accomplishment of the modification, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected during the HFEC inspection required by this paragraph: Repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected during the HFEC inspection required by this paragraph: Before further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(3) If any crack is found during any LFEC or X-ray inspection required by this paragraph and the crack is greater than 2 inches in length: Before further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

Follow-On Actions: Doorjamb Modified per Other Than SRM/Drawing

(c) If the general visual inspection required by paragraph (a) of this AD reveals that the corners of the forward lower cargo doorjamb HAVE been modified, but not in accordance with the DC–9 Structural Repair Manual (SRM) or Service Rework Drawing: Before further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

Follow-On Actions: Doorjamb Modified per SRM/Drawing

(d) If the general visual inspection required by paragraph (a) of this AD reveals that the corners of the forward lower cargo doorjamb HAVE been modified in accordance with the DC–9 SRM or Service Rework Drawing: Within 28,000 landings since accomplishment of that modification, or within 3,500 landings after May 22, 1998, or before the accumulation of 48,000 total landings, whichever occurs latest, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with McDonnell Douglas Service Bulletin DC9–53–277, dated September 30, 1996; or Revision 01, dated June 16, 1999. After the effective date of this AD, Revision 01 of the service bulletin must be used. Repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(1) If no crack is detected during any HFEC inspection required by this paragraph: Repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(2) If any crack is detected during any HFEC inspection required by this paragraph: Before further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(e) Accomplishment of the actions required by this AD constitutes terminating action for inspections of PSE 53.09.001 (reference McDonnell Douglas Model DC–9 SID)

required by AD 96–13–03, amendment 39–9671.

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) Alternative methods of compliance approved in accordance with AD 98–08–24; AD 94–03–01, amendment 39–8807; or AD 96–13–03, amendment 39–9671; are acceptable for compliance with the applicable requirements of this AD.

(3) An alternative method of compliance for any inspection or repair required by this AD that provides an acceptable level of safety may be used in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Los Angeles ACO, to make such findings.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

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

Issued in Renton, Washington, on August 20, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–22133 Filed 8–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–389–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 airplanes. This proposal would require a one-time general visual inspection to find wire chafing damage and to determine adequate clearance between the disconnect panel structure and the wires above the aft left lavatory; and corrective actions, if necessary. This action is necessary to prevent damage to certain wires due to contact between the wires and the adjacent structure, which could result in electrical arcing and consequent smoke and fire in the cabin. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 15, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–389–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–389–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–389–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–389–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of uncommanded deployment of cabin oxygen masks on a McDonnell Douglas MD–88 airplane. The deployment occurred in flight and was limited to the aft lavatories, aft flight attendant seat, and passenger seat masks aft of the aft

galley. No cockpit indication lights of the oxygen system/mask deployment illuminated to indicate the deployment. Subsequent inspection revealed burnt wires in the area of the disconnect panel above the aft left lavatory. The cause of the burnt wires was determined to be from chafing against the disconnect panel structure. The chafing condition was attributed to slack in the wires from the module blocks due to contact between a wire bundle and the disconnect panel. Such chafing damage could result in electrical arcing and consequent smoke and fire in the cabin.

The wire installations in the area of the disconnect panel above the aft left lavatory on Model MD–80 airplanes are similar to those installed on Model MD–90 airplanes. Therefore, these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin MD90–24A074, Revision 01, including Appendix A, dated August 8, 2001. The service bulletin describes procedures for a one-time inspection to find wire chafing damage and to determine adequate clearance between the disconnect panel structure and the wires above the aft left lavatory; and corrective actions, if necessary. The corrective actions include securing the wires using tie-wraps to obtain 0.50-inch minimum clearance, if clearance is inadequate; repairing or replacing any damaged wires; and doing a continuity check and test of applicable systems for wires that are repaired or replaced. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Service Information and This Proposed Rule

The service bulletin refers only to an ''inspection'' to find wire chafing and acceptable clearance between the disconnect panel structure and the wires, but this proposed AD would require a ''general visual inspection.'' Note 2 has been included in this proposed AD to define this type of inspection.

Although the service bulletin requests that operators report inspection findings of chafing or no chafing to the manufacturer after inspecting the wires, this proposed AD does not contain such a reporting requirement.

Cost Impact

There are approximately 113 airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $1,260, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2001–NM–389–AD.

Applicability: Model MD–90–30 airplanes, as listed in Boeing Alert Service Bulletin MD90–24A074, Revision 01, including Appendix A, dated August 8, 2001; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to certain wires due to contact between the wires and the adjacent structure, which could result in electrical arcing and consequent smoke and fire in the cabin, accomplish the following:

One-Time Inspection/Corrective Actions

(a) Within 4 months after the effective date of this AD: Do a one-time general visual inspection to find wire chafing damage and to determine adequate clearance between the disconnect panel structure and the wires above the aft left lavatory, per the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–24A074, Revision 01, including Appendix A, dated August 8, 2001. If no damage is found and the clearance is adequate, no further action is required by this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This

level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If no damage is found, but the clearance is inadequate: Before further flight, secure the wires using tie-wraps to obtain 0.50-inch minimum clearance per the service bulletin.

(2) If damage and/or inadequate clearance is found: Before further flight, repair or replace damaged wires with new wires and/or secure the wires using tie-wraps to obtain 0.50-inch minimum clearance, as applicable, per the service bulletin.

(b) Accomplishment of the one-time inspection and corrective actions before the effective date of this AD per Boeing Alert Service Bulletin MD90–24A074, dated May 14, 2001, is considered acceptable for compliance with paragraph (a) of this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

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

Issued in Renton, Washington, on August 20, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–22132 Filed 8–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–64–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 777 series airplanes. This proposal would require either a one-time inspection or a review of the airplane maintenance records for both stabilizer trim control modules (STCM) of the trim system of the horizontal stabilizer to determine if STCMs having certain serial numbers are installed; and follow-on corrective actions, if necessary. This proposal also would require eventual replacement of affected STCMs with new or reworked STCMs, which would terminate the follow-on actions. This action is necessary to prevent an uncommanded stabilizer trim due to simultaneous failure of two static seals on one STCM, combined with failure of the automatic shutdown function of the stabilizer trim system. Such failures could result in loss of pitch control and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 15, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–64–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–64–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Kenneth J. Fairhurst, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1118; fax (425) 227–1181.

Other Information: Sandy Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–64–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No.

2002–NM–64–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of an uncommanded stabilizer trim on a Boeing Model 777 series airplane that occurred on the ground. The leading edge of the horizontal stabilizer moved fully up, which would have resulted in a pitch command in the nose-down direction during flight. Investigation revealed that two seals on one stabilizer trim control module (STCM) of the trim system of the horizontal stabilizer had failed. An error in manufacturing the metal adjacent to the seals in the STCM caused the failures.

The STCM has a dual-valve design that requires simultaneous arm and control valve motion to create a stabilizer trim command. A single STCM seal failure can cause a single uncommanded valve motion, resulting in inoperative stabilizer trim in the airplane nose-up direction. Two STCM seal failures can cause two valves to move, resulting in an uncommanded stabilizer trim in the airplane nose-down direction. The stabilizer trim system includes a protective monitoring-and-shutdown function to detect and stop uncommanded stabilizer motion using a motor-operated shutoff valve to block hydraulic pressure supplied to the STCM. An uncommanded stabilizer trim due to simultaneous failure of two STCM seals and the automatic shutdown function of the stabilizer trim system could result in loss of pitch control and consequent loss of control of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 777–27A0047, Revision 2, dated October 11, 2001, which describes procedures for examination of both STCMs of the trim system of the horizontal stabilizer to identify affected serial numbers (S/N) and follow-on corrective actions, if necessary.

If any affected serial number is found, Part 1 of the Work Instructions describes procedures for repetitive functional tests to verify proper functioning of the stabilizer trim system of the horizontal stabilizer, including the automatic shutdown function of the stabilizer trim system. Part 1 also includes expanded instructions on how to conduct the test and interpret the results, as follows:

- If the functional test results indicate a test condition of ''FAILED'' or if the stabilizer does not move, the service bulletin specifies correcting the fault or cause of the condition, and repeating the functional test.
- Before returning the airplane to service, the functional test must have passed per Part 1.A.1. of the service bulletin, or the stabilizer trim system must be serviceable per Part 1.A.5.a. of the service bulletin.

Part 2 of the Work Instructions describes procedures for identification and removal of STCMs having S/N 6 through 549 inclusive, and replacement with new or reworked STCMs. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Boeing Service Bulletin 777–27A0047, Revision 2, references MOOG Aircraft Group Service Bulletin 160300–27–124, Revision 1, dated August 24, 2000, as the source of service information for changing and marking (reworking) the removed STCM units for installation on an airplane. The service bulletin also references certain chapters of the Boeing 777 Airplane Maintenance Manual for procedures for certain corrective actions.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the Boeing service bulletin described previously, except as discussed below.

Differences Between Service Information and This Proposed AD

The effectivity of Boeing Service Bulletin 777–27A0047 identifies only Model 777–200 and 300 series airplanes having line numbers 2 through 266 and 273, excluding line numbers 256, 258, and 260 through 263 inclusive, as being subject to the service bulletin, but we have determined that the proposed AD applies to all Model 777 series airplanes. The subject STCMs are line-replaceable units and may have been installed on other airplanes not included in the effectivity in the service bulletin. This proposed AD requires that all Model 777 series airplanes be inspected for STCMs having the serial numbers specified in the service bulletin.

Although the service bulletin does not specify a records review, this proposed AD requires, as the initial action, doing a one-time general visual inspection or reviewing the airplane maintenance records to determine if STCMs having the serial numbers specified in Part 2 of the Work Instructions of the service bulletin are installed (Part 2 identifies the serial numbers of the STCMs that are to be removed) within 30 days after the effective date of this AD. The functional test and follow-on corrective actions specified in the service bulletin, would be required on airplanes with the affected STCMs installed within 150 flight hours after doing the inspection or review. Note 2 of this proposed AD defines a general visual inspection.

Cost Impact

There are approximately 404 airplanes of the affected design in the worldwide fleet. The FAA estimates that 131 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection/review, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection/review proposed by this AD on U.S. operators is estimated to be $7,860, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator be required to do the functional test, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the functional test proposed by this AD on U.S. operators is estimated to be $60 per airplane, per test cycle.

Should an operator be required to do the replacement, it would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the vendor at no cost to operators. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $180 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of

power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2002–NM–64–AD.

Applicability: All Model 777 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncommanded stabilizer trim due to simultaneous failure of two static seals on one stabilizer trim control module (STCM) combined with failure of the automatic shutdown function of the stabilizer trim system, which could result in loss of pitch control and consequent loss of control of the airplane, accomplish the following:

One-Time Inspection/Review of Maintenance Records

(a) Within 30 days after the effective date of this AD: Do either a one-time general visual inspection or a review of the airplane maintenance records of both STCMs of the trim system of the horizontal stabilizer to determine the serial numbers (S/N), per Part 2 of the Work Instructions of Boeing Service Bulletin 777–27A0047, Revision 2, dated October 11, 2001. If any affected S/N (6 through 556 inclusive) is found on either STCM, within 150 flight hours after doing the inspection or review, do the actions specified in either paragraph (a)(1) or (a)(2) of this AD. If no affected serial number is found, no further action is required by this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Follow-On Corrective Actions

(1) Do a functional test of the trim system of the horizontal stabilizer per Part 1 of the Work Instructions of the service bulletin.

(i) If a test condition of PASSED is reported per Part 1.A.1. of the service bulletin, or considered serviceable per Part 1.A.5.a. of the service bulletin, repeat the test at least every 150 flight hours until the terminating action required by paragraph (b) of this AD is done.

(ii) If a test condition of FAILED is reported, or if the stabilizer does not move, correct the condition as specified in the Boeing 777 Airplane Maintenance Manual, and repeat the functional test at least every 150 flight hours until the terminating action specified in paragraph (b) of this AD is done. If failure of either STCM is found during the test, before further flight, replace the affected STCM with a new or reworked STCM as required by paragraph (b) of this AD.

(2) Replace any affected STCM with a new or reworked STCM as required by paragraph (b) of this AD.

Terminating Action

(b) Except as provided by paragraphs (a)(1)(ii) and (a)(2) of this AD: Within 2 years after the effective date of this AD, replace any STCM having an affected serial number identified in paragraph (a) of this AD with a new or reworked (modified and marked with an ''R'' suffix) STCM per Part 2 of the Work Instructions of Boeing Service Bulletin 777–27A0047, Revision 2, dated October 11, 2001. Such replacement ends the repetitive functional tests required by paragraph (a)(1) of this AD.

Credit for Actions Accomplished per Previous Revisions of Service Bulletin

(c) Replacement of affected STCMs before the effective date of this AD per Boeing Service Bulletin 777–27A0047, dated September 21, 2000; or Revision 1, dated November 2, 2000; is considered acceptable for compliance with paragraph (b) of this AD.

Spares

(d) As of the effective date of this AD, no person may install on any airplane a STCM having S/N 6 through 556 inclusive.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished, provided there has been no known failure of any STCM during any functional test required by paragraph (a)(1) of this AD.

Issued in Renton, Washington, on August 22, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–22131 Filed 8–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–17–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes Powered by General Electric (GE) CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness

directive (AD) that is applicable to certain Boeing Model 747 series airplanes powered by GE CF6–80C2 series engines. This proposal would require repetitive inspections and torque checks to find discrepancies of the fasteners that attach the diagonal brace fittings of the lower spar to the inboard engine struts, and modification of the fasteners if discrepancies are found. This proposal also would require eventual modification of all the fasteners, which would end the repetitive inspections and checks. This action is necessary to find and fix discrepant fasteners of the diagonal brace fittings, which could result in reduced structural integrity of the diagonal brace-to-strut attachment, and possible separation of the strut and engine from the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 15, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–17–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–17–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4243, fax (425) 687–4248. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–17–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–17–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that, during installation of the modification required by AD 95–13–06 (described below), loose and fractured fasteners of the diagonal brace fitting were found on certain Boeing Model 747 series airplanes powered by GE CF6–80C2 series engines. The cause of the fastener discrepancies was determined to be fatigue. The diagonal brace fitting of the lower spar is located at the lower aft end of the strut and provides the structural attachment of the strut to the diagonal brace. The fasteners attach the fitting to the inboard strut. Cracking of the fitting or surrounding structure due to loose and/or fractured fasteners could lead to the loss of the diagonal brace-to-strut attachment and possible loss of the strut and engine from the airplane.

Other Relevant Rulemaking

On June 16, 1995, we issued AD 95–13–06, amendment 39–9286 (60 FR 33338, June 28, 1995). That AD applies to certain Boeing Model 747 series airplanes equipped with General Electric CF6–80C2 series engines or Pratt & Whitney Model PW4000 series engines. That AD requires modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies, and correction of discrepancies.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 747–54A2207, dated November 16, 2000, which describes procedures for repetitive inspections and rotational checks (torque checks) to find discrepancies of the fasteners that attach the diagonal brace fittings of the lower spar to the inboard engine struts, and modification of the fasteners if discrepancies (loose, fractured, missing fastener heads) are found. Doing the modification eliminates the need for the repetitive inspections and checks. The modification includes doing a high frequency eddy current inspection (HFEC) of the fastener holes where discrepant fasteners are found and other indicated fastener holes, oversizing the holes, and installing new fasteners. The service bulletin specifies to contact Boeing if cracking is found during the HFEC inspection. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin

described previously, except as discussed below.

Differences Between the Service Bulletin and This Proposed AD

The service bulletin does not provide a compliance time for accomplishing the modification, but the proposed AD would require that the modification be accomplished within 72 months after the effective date of this AD. In developing an appropriate compliance time for this proposed AD, we considered not only the manufacturer's recommendation, but also the degree of urgency associated with addressing the unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modification. In light of all of these factors, we find a 72-month compliance time for completing the required modification to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repairs, this proposed AD would require such repairs to be accomplished per a method approved by us, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who we have authorized to make such findings.

Cost Impact

There are approximately 237 airplanes of the affected design in the worldwide fleet. We estimate that 14 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 5 work hours per airplane to accomplish the proposed inspection and torque check at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be $4,200, or $300 per airplane, per inspection/check cycle.

It would take approximately 76 work hours per airplane to accomplish the proposed terminating action at an average labor rate of $60 per work hour. Required parts would cost approximately $4,268 per airplane. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be $123,592, or $8,828 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2001–NM–17–AD.

Applicability: Model 747–200B, –300, –400, –400D, and –400F series airplanes powered by GE CF6–80C2 series engines, as listed in Boeing Alert Service Bulletin 747–54A2207, dated November 16, 2000, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To find and fix discrepant fasteners of the diagonal brace fittings, which could result in reduced structural integrity of the diagonal brace-to-strut attachment, and possible separation of the strut and engine from the airplane, accomplish the following:

Repetitive Inspections and Torque Checks/ Corrective Action

(a) Do a detailed inspection and torque check to find discrepancies of the fasteners (*e.g.*, loose, fractured, or missing fastener heads) that attach the diagonal brace fittings of the lower spar to the inboard engine struts, at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD, per Boeing Alert Service Bulletin 747–54A2207, dated November 16, 2000. Repeat the inspection and check after that every 8,000 flight hours or 24 months, whichever is first.

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

(1) For airplanes that have not been modified as required by AD 95–13–06, amendment 39–9286 (all Group 2 airplanes): Before the accumulation of 6,000 total flight cycles or within 24 months after the effective date of this AD, whichever is later.

(2) For airplanes that have been modified as required by AD 95–13–06 (all Group 1 airplanes): Before the accumulation of 6,000 total flight cycles after doing the modification or within 24 months after the effective date of this AD, whichever is later.

(b) If no discrepancy is found during any inspection/check required by paragraph (a) of this AD, repeat the inspection/check at the time specified in paragraph (a) of this AD until the terminating action specified in paragraph (c) of this AD is done. If any discrepancy is found, do the applicable actions specified in paragraph (b)(1) or (b)(2) of this AD.

(1) If any discrepancy is found in the area that connects the diagonal brace fitting to the

aft bulkhead, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, as required by this paragraph, the approval must specifically reference this AD.

(2) If any discrepancy is found in any area other than that specified in paragraph (b)(1) of this AD, before further flight, do the terminating action specified in paragraph (c) of this AD.

Terminating Action

(c) Except as provided by paragraph (b)(2) of this AD, within 72 months after the effective date of this AD: Do the modification (including doing a high frequency eddy current (HFEC) inspection, oversizing the fastener holes, and installing new fasteners) as specified in and per Figure 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2207, dated November 16, 2000. If any cracking is found during the HFEC inspection and the service bulletin specifies contacting Boeing for repair procedures, before further flight, repair per a method approved by the Manager, Seattle ACO; or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, as required by this paragraph, the approval must specifically reference this AD. Accomplishment of the actions specified in this paragraph ends the repetitive inspections and checks.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

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

Issued in Renton, Washington, on August 20, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–22130 Filed 8–29–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–15–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model DH.125, HS.125, and BH.125 Series Airplanes; Model BAe.125 Series 800A, 800A (C–29A), 800A (U–125), 800B, 1000A, and 1000B Airplanes; and Model Hawker 800, 800 (U–125A), 1000, and 800XP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD); applicable to certain Raytheon Model DH.125, HS.125, BH.125, and BAe.125 (U–125 and C–29A) series airplanes; and Model Hawker 800, Hawker 800 (U–125A), Hawker 800XP, and Hawker 1000 airplanes; that currently requires an inspection for cracking or corrosion of the cylinder head lugs of the main landing gear (MLG) actuator and follow-on/corrective actions. This action proposes to expand the applicability of the existing AD to add an airplane model and further clarify the applicability; and, for certain airplanes, to clarify the compliance time of the inspection requirements. The actions specified by the proposed AD are intended to prevent separation of the cylinder head lugs, which could prevent the MLG from extending and result in a partial gear-up landing.

DATES: Comments must be received by October 15, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–15–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–15–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* David Ostrodka, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946–4129; fax (316) 946–4407.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4242, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: sandi.carli@faa.gov. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–15–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–15–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 18, 2002, the FAA issued AD 2001–17–26 R1, amendment 39–12619 (67 FR 4171, January 29, 2002), applicable to certain Raytheon Model DH.125, HS.125, BH.125, and BAe.125 (U–125 and C–29A) series airplanes; and Model Hawker 800, Hawker 800 (U–125A), Hawker 800XP, and Hawker 1000 airplanes; to require an inspection for cracking or corrosion of the cylinder head lugs of the main landing gear (MLG) actuator and follow-on/corrective actions. The requirements of that AD are intended to prevent separation of the cylinder head lugs, which could prevent the MLG from extending and result in a partial gear-up landing.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has determined that the applicability should be expanded to be consistent with the effectivity specified in Raytheon Service Bulletin 32–3391, dated August 2000 (which is referenced as the appropriate source of service information for that AD), and revised to identify model designations as published in the most recent type certificate data sheet for the affected models. In addition, we have determined that the compliance time for the inspection requirements in that AD needs to be clarified in paragraph (b) of the final rule. Therefore, we have determined that further rulemaking is necessary, and this proposed AD follows from that determination.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2001–17–26 R1 to continue to require an inspection for cracking or corrosion of the cylinder head lugs of the MLG actuator, and follow-on/corrective actions. The proposed AD also would expand and clarify the applicability of the existing AD per the referenced service bulletin and type certificate data sheet, and, for certain airplanes, clarify the compliance time for the inspection requirements in paragraph (b)(3) of this AD. This proposed AD is intended to prevent separation of the cylinder head lugs, which could prevent the MLG from extending and result in a partial gear-up landing.

Explanation of Changes to AD 2001–17–26 R1

This proposed AD differs from AD 2001–17–26 R1 in that the applicability includes all of the airplane models cited in the effectivity of the referenced service bulletin. This change was necessary to include Model BAe.125 Series 800B airplanes, because that model was not specified in the applicability of AD 2001–17–26 R1. The change also clarifies model designations per the most recent type certificate data sheet.

We have further clarified the applicability of this proposed AD to specify airplane models ''as listed in Raytheon Service Bulletin 32–3391, dated August 2000.'' This change is necessary because the effectivity of the service bulletin also specifies that accomplishment of the service bulletin is not necessary for airplanes installed with an MLG actuator having part numbers ''AIR48502–5 and AIR48503–5, or DOIW00839–1 and DOIW00839–2.''

We also have clarified the compliance time for the inspection requirements in paragraphs (b), (b)(3)(i), and (b)(3)(ii) of this AD for Model BAe.125 series 800B airplanes, because an actuator cylinder head could have been in service for more than 7 years and have 4,001 or more total landings as of the effective date of this AD.

Cost Impact

There are approximately 1,000 airplanes of the affected design in the worldwide fleet. We estimate that 650 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 2001–17–26 R1, and retained in this proposed AD, take approximately 20 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $780,000, or $1,200 per airplane.

This proposed AD does not add any new actions or requirements, and only revises the applicability of the AD by adding an airplane model, clarifying the model designations, and clarifying the compliance time for the inspection requirements for certain airplanes. Therefore, the estimated cost impact for this proposed AD is unchanged from the existing AD.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, for affected airplanes within the period under the warranty agreement, the FAA has been advised that the manufacturer has committed previously to its customers that it will bear the cost of replacement parts. The FAA also has been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this AD may be less than the cost impact figure indicated above. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12619 (67 FR 4171, January 29, 2002), and by adding a new airworthiness directive (AD), to read as follows:

Raytheon Aircraft Company: Docket 2002–NM–15–AD. Supersedes AD 2001–17–26 R1, Amendment 39–12619.

Applicability: Model DH.125, HS.125, and BH.125 series airplanes; Model BAe.125 series 800A, 800A (C–29A), 800A (U–125), 800B, 1000A, and 1000B airplanes; and Model Hawker 800, 800 (U–125A), 1000, and 800XP airplanes; as listed in Raytheon Service Bulletin 32–3391, dated August 2000.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the cylinder head lugs, which could prevent the main landing gear (MLG) from extending and result in a partial gear-up landing, accomplish the following:

Restatement of Certain Requirements of AD 2001–17–26 R1

Inspection

(a) For Model DH.125, HS.125, and BH.125 series airplanes; BAe.125 series 800A, 800A (C–19A), 800A (U–125A), 1000A, and 1000B airplanes; and Model Hawker 800, 800 (U–125A), 800XP, and 1000 airplanes: Perform an eddy current inspection of the actuator cylinder head lugs for cracking or corrosion per Raytheon Service Bulletin 32–3391, dated August 2000, at the time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD, as applicable.

(1) For actuator cylinder heads that have 3,000 or less total landings as of October 3, 2001 (the effective date of AD 2001–17–26 R1, amendment 39–12619): Perform the eddy current inspection within 24 months after October 3, 2001.

(2) For actuator cylinder heads that have 3,001 to 4,000 total landings as of October 3, 2001: Perform the eddy current inspection within 6 months after October 3, 2001.

(3) For actuator cylinder heads that have been in service for more than 7 years as of October 3, 2001: Perform the eddy current inspection within 6 months after October 3, 2001.

(4) For actuator cylinder heads that have 4,001 or more total landings as of October 3, 2001: Perform the eddy current inspection within 10 landings after October 3, 2001.

New Requirements of This AD

(b) For Model BAe.125 series 800B airplanes: Perform an eddy current inspection of the actuator cylinder head lugs for cracking or corrosion per Raytheon Service Bulletin 32–3391, dated August 2000, at the time specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable.

(1) For actuator cylinder heads that have 3,000 or less total landings as of the effective date of this AD: Perform the eddy current inspection within 24 months after the effective date of this AD.

(2) For actuator cylinder heads that have 3,001 to 4,000 total landings as of the effective date of this AD: Perform the eddy current inspection within 6 months after the effective date of this AD.

(3) For actuator cylinder heads that have been in service for more than 7 years or that have 4,001 or more total landings as of the effective date of this AD: Perform the eddy current inspection at the earlier of the times specified in paragraph (b)(3)(i) or (b)(3)(ii) of this AD:

(i) Within 6 months after the effective date of this AD; or

(ii) Within 10 landings after the effective date of this AD.

If No Cracking or Corrosion

(c) If no cracking or corrosion is found during the inspection required by paragraph (a) or (b) of this AD, before further flight, accomplish follow-on actions (*e.g.*, ''vibro-etching'' the MLG actuator data plate, painting a blue stripe on the actuator cylinder head to indicate 1/32-inch oversize bushings, replacing bushings, and applying corrosion protection to the lug bores), per Raytheon Service Bulletin 32–3391, dated August 2000.

If Any Cracking or Corrosion

(d) If any cracking or corrosion is found during the inspection required by paragraph (a) or (b) of this AD, before further flight, accomplish either of the actions specified in paragraph (d)(1) or (d)(2) of this AD, per Raytheon Service Bulletin 32–3391, dated August 2000:

(1) Replace the actuator of the MLG with a new or serviceable actuator; or

(2) Replace the actuator cylinder head with a new cylinder head.

Note 2: Raytheon Service Bulletin 32–3391, dated August 2000, references Precision Hydraulics Component Maintenance Manual 32–30–1105 as an additional source of service information.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permit

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

Issued in Renton, Washington, on August 26, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–22178 Filed 8–29–02; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 408

RIN 0960–AF61

Special Benefits for Certain World War II Veterans

AGENCY: Social Security Administration (SSA).

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to add to our regulations a new part 408 that would set forth our rules applicable to claims for special veterans benefits (SVB) under title VIII of the Social Security Act (the Act). The title VIII program was effective in May 2000 and provides monthly benefits to certain World War II (WWII) veterans who were previously eligible for supplemental security income (SSI) payments under title XVI of the Act and reside outside the United States. These proposed rules include five new subparts that would describe: what the new part is about, how we determine whether you qualify for and are entitled to SVB, how you file for SVB, how we evaluate evidence under

the SVB program, and how we compute and pay SVB.

In addition to these subparts, we are developing additional proposed subparts describing other aspects of the title VIII program that we will publish at a later date.

DATES: To be sure your comments are considered, we must receive them by October 29, 2002.

ADDRESSES: You may give us your comments by using: our Internet site facility (i.e., Social Security Online) at *http://www.ssa.gov/regulations*, e-mail to *regulations@ssa.gov;* telefax to (410) 966–2830; or by sending a letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.access.gpo.gov/su_docs/aces/aces140.html*. It is also available on the Internet site for SSA (*i.e., Social Security Online*) at *http://www.ssa.gov/regulations*.

FOR FURTHER INFORMATION CONTACT: Georgia E. Myers, SSA Regulations Officer, Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–3632 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778 or visit our Internet site, SSA Online, at *http://www.ssa.gov*.

SUPPLEMENTARY INFORMATION:

Statutory Provisions

Section 251 of the Foster Care Independence Act of 1999 (Pub. L. No. 106–169), enacted on December 14, 1999, added a new title VIII to the Act (Special Benefits for Certain World War II Veterans). Title VIII authorizes SSA to pay special veterans benefits (SVB) to certain WWII veterans who reside outside the United States. Establishing SVB entitlement is a two-step process: first, you need to show that you meet certain qualifying requirements; once we determine that you qualify for SVB, you will be entitled to SVB payments after you begin residing outside the United States.

How To Qualify for SVB

Section 802 of the Act provides that, in order to be entitled to SVB, you must first establish that you are a ''qualified individual.'' You qualify for SVB if you file an application for SVB and are:

- Age 65 on or before December 14, 1999 (the date the title VIII program was enacted);
- A WWII veteran;
- Eligible for SSI for both December 1999 (the month of enactment) and the month you file your application for SVB; and
- Receiving total monthly benefit income from other sources that is less than 75 percent of the Federal benefit rate (FBR) under SSI (title XVI of the Act).

However, even if you meet all the above requirements, section 804 of the Act specifies certain conditions that will still prevent you from qualifying for SVB or, if you have already qualified for SVB, will prevent us from paying you benefits. Specifically, the following events will prevent you from qualifying for or receiving SVB:

- Removal (including deportation) from the United States under section 237(a) or 212(a)(6)(A) of the Immigration and Nationality Act.
- Flight to avoid prosecution, or custody or confinement after conviction, for a crime or an attempt to commit a crime that is a felony under the laws of the United States or the jurisdiction of the United States from which you fled or, in the case of the State of New Jersey, is a high misdemeanor.
- Violation of a condition of probation or parole imposed under Federal or State law.
- Residence in a country to which payments are withheld by the Treasury Department under 31 U.S.C. 3329.

WWII Veteran Status

As explained above, section 802 of the Act specifies that you must be a WWII veteran to qualify for SVB. Section 812(1) of the Act defines a WWII veteran as a person who served during WWII in:

- The active military, naval, or air service of the United States during the period beginning on September 16, 1940 and ending on July 24, 1947; or
- The organized military forces of the Government of the Commonwealth of the Philippines, while the forces were in the service of the U.S. Armed Services under the military order of the President dated July 26, 1941, including organized guerrilla forces under commanders appointed by the Commander in Chief, Southwest Pacific Area, or other competent authority in the U.S. Army. This service must have been rendered at any time during the period beginning July 26, 1941 and ending on December 30, 1946.

In addition to meeting either of these requirements, you must have been discharged or released from this service under conditions other than dishonorable after serving at least 90 days or, if your service was less than 90 days, because of a disability or injury incurred or aggravated in the line of active duty.

How We Evaluate Evidence

Sections 806 and 810 of the Act authorize us to establish rules about the kinds of information you must give us to show that you qualify for SVB and that you are entitled to receive benefits. Section 806 also specifies that we cannot pay you SVB based only on your statements about whether you qualify for benefits. Instead, you must give us documents or other evidence that we will verify with independent sources.

How We Calculate and Pay SVB

Section 805 of the Act specifies that your monthly SVB payment is equal to 75 percent of the Federal benefit rate (FBR) under title XVI of the Act, reduced by the amount of any other benefit income you receive for that month. As used in title VIII, ''other benefit income'' means any recurring payments you receive such as an annuity, pension, retirement, or disability benefit, but only if you received a similar payment from the same (or a related) source during the 12-month period before the month you file an application for SVB.

Applying for SVB

As indicated above, section 802 of the Act requires you to file an application in order to establish that you qualify for SVB. Section 806 of the Act authorizes SSA to prescribe the requirements for filing such an application. In order to maintain consistency throughout the benefit programs we administer, we have attempted, where possible, to use the same requirements we use for filing applications under the titles II and XVI programs. These rules were established in order to ensure that individuals have every reasonable opportunity to file a claim for benefits at the earliest possible time without loss of benefits, and we believe those same considerations apply to claims for title VIII benefits.

Explanation of New Part 408

Proposed part 408 would initially consist of 5 subparts. (As indicated above, we will propose additional

subparts in a subsequent NPRM.) Following is a list of each proposed subpart that includes a brief description of the contents of each proposed section in the subpart.

Subpart A (Introduction, General Provision and Definitions)

- Section 408.101 introduces the title VIII program and contains a list of each subpart in part 408, and gives a brief description of the topics covered in those subparts.
- Section 408.105 briefly explains the purpose of the title VIII program and that the program is administered by SSA.
- Section 408.110 defines certain terms that are used throughout part 408.
- Section 408.120 explains how we calculate time periods in which you must take a required action under the SVB program when they end on a day, any part of which is a nonworkday for Federal employees. This is the same as the rule we use under both the title II and title XVI programs.

Subpart B (SVB Qualification and Entitlement)

As explained above, you must meet certain requirements to qualify for SVB (*i.e.*, you must be age 65 on or before December 14, 1999, a WWII veteran, SSI eligible for December 1999 and the month in which you file for SVB, not receiving other benefit income that is 75% or more of the SSI FBR, and you must file an application for SVB). In addition, even if you meet these requirements, certain other conditions will prevent you from qualifying for SVB or, if you are already qualified, will prevent us from making SVB payments to you. Subpart B discusses these qualifying and entitlement requirements. Specifically:

- Section 408.201 describes what subpart B is about and gives a general explanation of how you qualify for and establish entitlement to SVB payments.
- Section 408.202 gives a list of the specific requirements you must meet to qualify for SVB.
- Section 408.204 describes the conditions that will prevent you from qualifying for SVB even if you meet the requirements in § 408.202.
- Section 408.206 explains that when you apply for SVB, we will first determine if you qualify for benefits. If you do not qualify, we will deny your claim. If you do qualify, we will send you a written notice of qualification that explains you have 4 calendar months after the date of the notice in which to begin residing outside the U.S. or we will deny your claim. If you begin residing outside the U.S. within that 4-month period, your SVB payments will begin with the first full month in which you resided outside the U.S. on the first day of the month.
- Section 408.208 explains that, if you begin residing outside the U.S. within 4 calendar months after the date of the written notice of SVB qualification, we will send you a notice of SVB entitlement, including the date your entitlement begins, the amount of your monthly SVB payment, and the amount of any reduction in your payment because you are receiving other benefit income.
- Section 408.210 explains that if you do not begin residing outside the U.S. within 4 calendar months after the date of the written notice of SVB qualification, we will deny your SVB claim.
- Section 408.212 explains what happens if you are residing outside the U.S. at the time you file for SVB. If you meet all the requirements for qualification and none of the SVB disqualifying events applies to you, we will ask you for evidence of your residence outside the U.S. After your foreign residence is established, we will send you a notice of SVB entitlement, including the date your entitlement begins, the amount of your monthly SVB payment, and the amount of any reduction in your payment because you are receiving other benefit income.
- Section 408.214 explains that, in order to qualify for SVB, you must have been age 65 on or before December 14, 1999.
- Section 408.216 explains the service and discharge requirements you must meet to be considered to be a WWII veteran.
- Section 408.218 explains what we mean by eligible for SSI. Under this section, anyone whose SSI eligibility has not been terminated or whose SSI benefits are not subject to a penalty under § 416.1340 of our SSI regulations will be considered to be eligible for SSI, whether or not the person is actually receiving SSI payments.
- Section 408.220 explains what we mean by ''other benefit income'' and includes examples of payments we consider to be ''other benefit income.'' It also explains that your other benefit income will only affect your entitlement to SVB if you received a similar payment from the same or a related source at any time during the 12-month period before you file for SVB.
- Section 408.222 explains how your other benefit income affects SVB qualification and the amount of your SVB payment. If you are receiving other benefit payments when you file for SVB, we will deny your claim if these payments equal or exceed 75 percent of the FBR payable to individual SSI recipients with no income; otherwise we will reduce your monthly SVB payment by the amount of the other benefit income you receive in that month.
- Section 408.224 explains how we determine the monthly payment of your other benefit income if the payments are not made on a monthly basis.
- Section 408.226 explains that, once you begin receiving SVB, we will reduce your SVB payments if you begin receiving additional other benefit income, but only if you received similar benefits from the same or a related source during the 12-month period before you applied for SVB.
- Section 408.228 explains when we will consider you to be residing outside the U.S. It also explains that, for SVB purposes, you can be a resident of only one country at a time.
- Section 408.230 explains when you must establish residence outside the U.S. Under the rulemaking authority provided by the law, we propose to establish a 4-month time limit within which you need to establish residence outside the U.S. Generally, the 4-month period would begin with the month after the month in which the notice that you qualify for SVB is dated. However, this section also explains that we will extend the 4-month period if you are in the U.S. to appeal a decision on your title VIII claim or on a title II and/or a title XVI claim that affects your SVB qualification. We believe this 4-month time period takes into account the fact that you generally need to be residing in the U.S. in order to be SSI eligible (and therefore are residing in the U.S. when you apply for SVB) but still gives you sufficient time in which to make arrangements to leave the U.S. and to begin residing outside the U.S.
- Section 408.232 explains that you lose your foreign resident status and we will stop paying you SVB if you enter the U.S. and stay here for more than 1 full calendar month. We will not resume your SVB payments until you establish that you are again residing outside the U.S. In recognition of the fact that many individuals receiving SVB benefits may wish to return to the U.S. for short periods (e.g., to visit friends or relatives), we propose to permit them to continue receiving SVB while in the U.S. provided they do not stay in the U.S. for more than 1 full calendar month.
- Section 408.234 explains that you may continue to receive SVB payments even if you are in the U.S. for more than 1 full calendar month if you are prevented from returning to your home

abroad by circumstances beyond your control or you are in the U.S. to appeal an SSA decision on a claim filed under title II, VIII, or XVI of the Act.

Subpart C (Filing Applications)

This subpart contains our rules on filing applications under the SVB program. Specifically:

- Section 408.301 explains what subpart C is about.
- Section 408.305 explains that you must file an application to receive SVB.
- Section 408.310 explains what makes an application a claim for SVB.
- Section 408.315 explains that you must file your own application for SVB unless you are mentally incompetent or physically unable to sign your own application. In that case, certain other individuals may sign the application on your behalf.
- Section 408.320 explains the kinds of evidence an individual must give us to show that he or she has authority to sign an application on your behalf.
- Section 408.325 explains when we consider you to have filed your application.
- Section 408.330 explains how long your application for SVB will remain in effect.
- Section 408.340 explains when we will use the date of a written statement as your application filing date.
- Section 408.345 explains the circumstances under which we will establish your filing date based on an oral inquiry about qualifying for SVB.
- Section 408.351 explains the circumstances under which we will establish your filing date if we give you misinformation about qualifying for SVB.
- Section 408.355 explains what happens if you request to withdraw your application for SVB.
- Section 408.360 explains how you can cancel your request to withdraw your application for SVB.

Subpart D (Evidence Requirements)

Proposed subpart D sets forth the rules we would use to evaluate evidence under the title VIII program. Specifically:

- Section 408.401 explains that, in addition to your statements, we may need documentary evidence to confirm that you meet all the SVB qualification requirements and ensure that we pay you the correct amount of benefits.
- Section 408.402 explains when you need to give us evidence.
- Section 408.403 explains where you should give us the evidence we need to process your SVB claim.
- Section 408.404 explains if you fail to give us evidence we need in connection with your claim by a specified date, we may decide you do not qualify for SVB or, if you are already receiving SVB, we may stop or reduce your payments until we receive the necessary evidence. This section also explains when we will give you more time to give us the evidence.
- Section 408.405 explains that when you need to give us evidence to establish that you qualify for SVB or may continue receiving SVB payments, the evidence must be an original document or record or a certified copy of the original document or record. In the case of certified copies, this section also includes a list of the people who may certify the document or record to be a true and exact copy of the original. The section also explains that when you give us an original record, we will photocopy it and return the original record to you.
- Section 408.406 explains how we evaluate the evidence you give us.
- Section 408.410 explains that you must submit evidence of your age to qualify for SVB unless we have already established your age in connection with a claim for benefits under title II or title XVI of the Act.
- Section 408.412 explains what kinds of documents you need to give us to show that you were born on or before December 15, 1934.
- Section 408.413 explains how we evaluate the evidence of age you give us.
- Section 408.420 explains that your evidence of WWII service must show your name, your branch of service, the dates of your service, your military service number, the character of your discharge and, if you were in the organized military forces (including organized guerrilla forces) of the Government of the Commonwealth of the Philippines, that your service is considered to have been in the service of the U.S. Armed Forces. This section also explains the kind of evidence you can give us to show you are a WWII veteran.
- Section 408.425 explains that we will use our data records to determine your SSI eligibility.
- Section 408.430 explains that we need evidence of your other benefit income if the income is less than 75 percent of the FBR.
- Section 408.432 explains what is evidence of your other benefit income.
- Section 408.435 explains the evidence you need to give us to show that you are residing outside the U.S.
- Section 408.437 explains the evidence you need to give us to show that you had good cause for remaining in the U.S. for more than one full month after you begin receiving SVB. It includes a description of the kinds of evidence you can give to show both that you made a good faith effort to return to your home abroad and the circumstances that prevented you from doing so.

Subpart E (Amount and Payment of Benefits)

Proposed subpart E explains how we determine the amount of and pay SVB. Specifically:

- Section 408.501 explains what subpart E is about.
- Section 408.505 explains that the maximum SVB payment is equal to 75 percent of the SSI FBR for an individual with no income. It explains that whenever there is a cost-of-living allowance (COLA) increase in the FBR, we will increase your SVB to reflect the COLA increase. It also explains that we will reduce the maximum SVB payable by the amount of your other benefit income.
- Section 408.510 explains that, when you are receiving other benefit income, we do not round the amount of your SVB payment. This section also explains that the minimum SVB payable is $1.00.
- Section 408.515 explains that we make SVB payments on the first day of the month for which they are due. We also explain that when the first day of the month is a Saturday, Sunday, or Federal legal holiday, we will make your payment on the first preceding day that is not a Saturday, Sunday or Federal legal holiday.

Clarity of These Regulations

Executive Order (E.O.) 12866, as amended by E.O. 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is unclear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant impact on a substantial number of small entities because they affect only individuals filing for benefits under title VIII of the Act. Therefore, a regulatory flexibility analysis, as provided for in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules contain reporting requirements as shown in the table below. Where the public reporting burden is accounted for in Information Collection Requests for the various forms that the public uses to submit the information to SSA, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules.

Reporting requirements to provide evidence and documentation are generally discussed in §§ 408.201, 408.206(a) and (b), 408.401, 408.402, 408.403, and 408.405. We have not included these sections in the table below because the burdens for the specific reporting requirements for evidence and documentation are accounted for in other sections listed in the table.

Section number	Number of respondents	Frequency of response	Average burden per response (hrs.)	Estimated annual hour burden
§ 408.202(d); § 408.210; § 408.230(a); § 408.305; §§ 408.310–.315	1	1	1	1
§ 408.232(a)	5	1	.25	1.25
§ 408.320	5	1	.25	1.25
§ 408.340	5	1	.25	1.25
§ 408.345	2	1	.25	.50
§ 408.351(d) & (f)	2	1	.50	1.00
§ 408.355(a)	5	1	.25	1.25
§ 408.360(a)	2	1	.25	.50
§ 408.404(c)	20	1	.25	5.00
§§ 408.410–412	20	1	.25	5.00
§ 408.420(a), (b)	500	1	.25	125.00
§§ 408.430 & .432	400	1	.50	200.00
§ 408.435(a), (b), (c)	500	1	.25	125.00
§ 408.437(b), (c), (d)	20	1	.50	10.00

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted to the Social Security Administration at the following address: Social Security Administration, Attn: SSA Reports Clearance Officer, Rm. 1A–20 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401.

Comments can be received for between 30 and 60 days after publication of this notice and will be most useful if received by SSA within 30 days of publication.

(Catalog of Federal Domestic Assistance Program No. 96.020, Special Benefits for Certain World War II Veterans).

List of Subjects in 20 CFR Part 408

Administrative practice and procedure, Aged, Reporting and recordkeeping requirements, Social Security, Special veterans benefits, Veterans.

Dated: August 20, 2002.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to add a new part 408 to Chapter III of Title 20 of the Code of Federal Regulations as follows:

PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

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408.410 When do you need to give us evidence of your age?
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408.413 How do we evaluate the evidence of age you give us?

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408.420 What evidence of World War II military service do you need to give us?

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408.425 How do we establish your eligibility for SSI?

Other Benefit Income

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408.435 How do you prove that you are residing outside the United States?
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Subpart E—Amount and Payment of Benefits

408.501 What is this subpart about?
408.505 How do we determine the amount of your SVB payment?
408.510 How do we reduce your SVB when you receive other benefit income?
408.515 When do we make SVB payments?

Subpart A—Introduction, General Provision and Definitions

Authority: Secs. 702(a)(5) and 801–813 of the Social Security Act (42 U.S.C. 902(a)(5) and 1001–1013).

§ 408.101 What is this part about?

The regulations in this part 408 (Regulations No. 8 of the Social Security Administration) relate to the provisions of title VIII of the Social Security Act as added by Pub. L. 106–169 enacted December 14, 1999. Title VIII (Special Benefits for Certain World War II Veterans) established a program for the payment of benefits to certain World War II veterans. The regulations in this part are divided into the following subparts according to subject content.

(a) Subpart A contains this introductory section, a statement of the general purpose underlying the payment of special benefits to World War II veterans, general provisions applicable to the program and its administration, and defines certain terms that we use throughout part 408.

(b) Subpart B contains the requirements for qualification and entitlement to monthly title VIII benefits.

(c) Subpart C contains the provisions relating to the filing and withdrawal of applications.

(d) Subpart D contains the provisions relating to the evidence required for establishing qualification for and entitlement to monthly title VIII benefits.

(e) Subpart E contains the provisions about the amount and payment of monthly benefits.

§ 408.105 Purpose and administration of the program.

The purpose of the title VIII program is to assure a basic income level for certain veterans who are entitled to supplemental security income (SSI) and who want to leave the United States to live abroad. The title VIII program is administered by the Social Security Administration.

§ 408.110 General definitions and use of terms.

(a) *Terms relating to the Act and regulations.* (1) *The Act* means the Social Security Act as amended (42 U.S.C. Chap.7).

(2) *Title* means the title of the Act.

(3) *Section or §* means a section of the regulations in part 408 of this chapter unless the context indicates otherwise.

(b) Commissioner; Appeals Council; Administrative Law Judge defined. (1) *Commissioner* means the Commissioner of Social Security.

(2) *Appeals Council* means the Appeals Council of the Office of Hearings and Appeals of the Social Security Administration or a member or members of the Council designated by the Chairman.

(3) *Administrative Law Judge* means an Administrative Law Judge in the Office of Hearings and Appeals in the Social Security Administration.

(c) *Miscellaneous.* (1) *A calendar month.* The period including all of 24 hours of each day of January, February, March, April, May, June, July, August, September, October, November, or December.

(2) *Federal benefit rate (FBR).* The amount of the cash benefit payable under title XVI for the month to an eligible individual who has no income. The FBR does not include any State supplementary payment that is paid by the Commissioner pursuant to an agreement with a State under section 1616(a) of the Act or section 212(b) of Public Law 93–66.

(3) *Qualified individual.* An individual who meets all the requirements for qualification for SVB in § 408.202 and does not meet any of the conditions that prevent qualification in § 408.204.

(4) *Special veterans benefits (SVB).* The benefits payable to certain veterans of World War II under title VIII of the Act.

(5) *State.* Unless otherwise indicated, this means:

(i) A State of the United States;
(ii) The District of Columbia; or
(iii) The Northern Mariana Islands.

(6) *Supplemental Security Income (SSI).* SSI is the national program for providing a minimum level of income to aged, blind, and disabled individuals under title XVI of the Act.

(7) *United States.* When used in the geographical sense, this is:

(i) The 50 States;
(ii) The District of Columbia; and
(iii) The Northern Mariana Islands.

(8) *We, us* or *our* means the Social Security Administration (SSA).

(9) *World War II.* The period beginning September 16, 1940 and ending on July 24, 1947.

(10) *You* or *your* means, as appropriate, the person who applies for benefits, the person for whom an application is filed, or the person who is considering applying for benefits.

§ 408.120 Periods of limitations ending on Federal nonworkdays.

Title VIII of the Act and the regulations in this part require you to take certain actions within specified time periods or you may lose your right to a portion or all of your benefits. If any such period ends on a Saturday, Sunday, Federal legal holiday, or any other day all or part of which is declared to be a nonworkday for Federal employees by statute or Executive Order, you will have until the next Federal workday to take the prescribed action.

Subpart B–SVB—Qualification and Entitlement

Authority: Secs. 702(a)(5), 801, 802, 803, 804, 806, 810 and 1129A of the Social Security Act (42 U.S.C. 902(a)(5), 1001, 1002, 1003, 1004, 1006, 1010 and 1320a–8a).

§ 408.201 What is this subpart about?

You are qualified for SVB if you meet the requirements listed in § 408.202 and if none of the conditions listed in § 408.204 exist. However, you cannot be entitled to receive benefits for any month before the first month in which you reside outside the United States on the first day of the month and meet all the qualification requirements. You must give us any information we request and evidence to prove that you meet these requirements. You continue to be qualified for SVB unless we determine that you no longer meet the requirements for qualification in § 408.202 or we determine that you are not qualified because one of the conditions listed in § 404.204 of this chapter exists. You continue to be entitled to receive benefits unless we determine you are no longer residing outside the United States.

§ 408.202 How do you qualify for SVB?

You qualify for SVB if you meet all of the following requirements.

(a) *Age.* You were age 65 or older on December 14, 1999 (the date on which Pub. L. 106–169 was enacted into law).

(b) *World War II veteran.* You are a World War II veteran as explained in § 408.216.

(c) *SSI eligible.* You were eligible for SSI, as explained in § 408.218, for both December 1999 (the month in which Pub. L. 106–169 was enacted into law) and for the month in which you file your application for SVB.

(d) *Application.* You file an application for SVB as explained in subpart C of this part.

(e) *Other benefit income.* You do not have other benefit income, as explained in § 408.220, which is equal to, or more than, 75 percent of the current FBR.

§ 408.204 What conditions will prevent you from qualifying for SVB?

(a) *General rule.* Even if you meet all the qualification requirements in § 408.202, you will not be qualified for SVB for any of the following months.

(1) *Removal from the United States.* Any month that begins after the month in which we are advised by the Attorney General that you have been removed (including deported) from the United States pursuant to section 237(a) or 212(a)(6)(A) of the Immigration and Nationality Act and before the month in which you are subsequently lawfully admitted to the United States for permanent residence.

(2) *Fleeing felon.* Any month during any part of which you are fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the United States or the jurisdiction in the United States from which you fled, for a crime or an attempt to commit a crime that is a felony under the laws of the place from which you fled, or in the case of the State of New Jersey, is a high misdemeanor.

(3) *Parole violation.* Any month during any part of which you violate a condition of probation or parole imposed under Federal or State law.

(4) *Residence in certain countries.* Any month during which you are not a citizen or national of the United States and reside in a country to which payments to residents of that country are withheld by the Treasury Department under section 3329 of title 31, United States Code.

(b) *Condition occurs before we determine that you are qualified.* If one of the conditions in paragraph (a) of this section occurs before we determine that you are qualified, we will deny your claim for SVB.

(c) *Condition occurs after we determine that you are qualified.* If one of the conditions in paragraph (a) of this section occurs after we determine that you are qualified for SVB, you cannot receive SVB payments for any month in which the condition exists.

§ 408.206 What happens when you apply for SVB?

(a) *General rule.* When you apply for SVB, we will ask you for documents and other information that we need to determine if you meet all the requirements for qualification. You must give us complete information (see subpart D of this part for our rules on evidence). If you do not meet all of the requirements for qualification listed in § 408.202, or if one of the conditions listed in § 408.204 exists, we will deny your claim.

(b) *If you are a qualified individual residing in the United States.* If you meet all the requirements for qualification listed in § 408.202 and if none of the conditions listed in § 408.204 exist, we will send you a letter telling you the following:

(1) You are qualified for SVB;

(2) In order to become entitled to SVB, you will have to begin residing outside the United States by the end of the fourth calendar month after the month in which your notice of qualification is dated. For example, if our letter is dated May 15, you must establish residence outside the United States before October 1 of that year; and

(3) What documents and information you must give us to establish that you are residing outside the United States.

§ 408.208 What happens if you establish residence outside the United States within 4 calendar months?

If you begin residing outside the United States within 4 calendar months after the month in which your SVB qualification notice is dated, we will send you a letter telling you that you are entitled to SVB and the first month for which SVB payments can be made to you. The letter will also tell you the amount of your monthly benefit payments, whether your payments are reduced because of your other benefit income, and what rights you have to a reconsideration of our determination.

§ 408.210 What happens if you do not establish residence outside the United States within calendar 4 months?

If you do not establish residence outside the United States within 4 calendar months after the month in which your SVB qualification notice is dated, we will deny your SVB claim. We will send you a notice explaining what rights you have to a reconsideration of our determination. You will have to file a new application and meet all the requirements for qualification and entitlement based on the new application to become entitled to SVB.

§ 408.212 What happens if you are a qualified individual already residing outside the United States?

If you meet all the requirements for qualification listed in § 408.202 and if none of the conditions listed in § 408.204 exist, we will ask you for documents and information to establish

your residence outside the United States. If you establish that you are residing outside the United States, we will send you a letter telling you that you are entitled to SVB and the first month for which SVB payments can be made to you. The letter will also tell you the amount of your monthly benefit payments, whether your payments are reduced because of your other benefit income, and what rights you have to a reconsideration of our determination.

Age

§ 408.214 Are you age 65?

You become age 65 on the first moment of the day before the anniversary of your birth corresponding to age 65. Thus, you must have been born on or before December 15, 1934 to be at least age 65 on December 14, 1999 and to qualify for SVB.

Military Service

§ 408.216 Are you a World War II veteran?

(a) *Service requirements.* For SVB purposes, you are a World War II veteran if you:

(1) Served in the active military, naval or air service of the United States during World War II at any time during the period beginning on September 16, 1940 and ending on July 24, 1947; or

(2) Served in the organized military forces of the Government of the Commonwealth of the Philippines, while the forces were in the service of the U.S. Armed Forces pursuant to the military order of the President dated July 26, 1941, including among the military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the U.S. Army. This service must have been rendered at any time during the period beginning July 26, 1941 and ending on December 30, 1946.

(b) *Discharge requirements.* You must have been discharged or released from this service under conditions other than dishonorable after service of 90 days or more or, if your service was less than 90 days, because of a disability or injury incurred or aggravated in the line of active duty.

SSI Eligibility

§ 408.218 Do you meet the SSI eligibility requirements?

For SVB purposes, you are eligible for SSI for a given month if all of the following are met:

(a) You have been determined to be eligible for SSI (except as noted in paragraph (c) of this section); you do not have to actually receive a payment for that month);

(b) Your SSI eligibility has not been terminated for that month; and

(c) Your SSI benefits are not subject to a penalty under § 416.1340 of this chapter. This includes months in which a penalty has been imposed, as well as months in which a penalty cannot be imposed because you are in nonpay status for some other reason (for example, because your other benefit income is more than the maximum SVB monthly benefit amount (see § 408.505)).

Other Benefit Income

§ 408.220 Do you have other benefit income?

(a) *Description of other benefit income.* Other benefit income is any regular periodic payment (such as an annuity, pension, retirement or disability benefit) that you receive. For other benefit income to affect your SVB eligibility, you must have been receiving the other benefit income in any part of the 12-month period before the month in which you filed your application for SVB. Payments received after you become entitled to SVB can be included as other benefit income only if you received a similar payment from the same or a related source during any part of the 12-month period before the month in which you filed your application for SVB.

(b) *When other benefit payments are considered to be similar payments from the same or a related source.* Payments are similar payments from the same or a related source if they are received from sources substantially related to the sources of income received before you became entitled to SVB. For example, if you received U.S. Social Security spouse's benefits in the 12-month period before you filed your application for SVB and these were changed to widower's benefits after you became entitled to SVB, we would consider this to be from the same or a related source.

(c) *Examples of other benefit income.* Other benefit income can come from a source inside or outside the United States. It includes, but is not limited to, any of the following:

(1) Veterans' compensation or pension,

(2) Workers' compensation,

(3) U.S. or foreign Social Security benefits (not including SSI payments from the U.S.),

(4) Railroad retirement annuity or pension,

(5) Retirement or disability pension,

(6) Individual Retirement Account (IRA) payments, and

(7) Unemployment insurance benefit.

(d) *If you receive a lump-sum payment.* Regular periodic payments can also include lump-sum payments made at your request or as an administrative convenience or practice in place of more frequent payments. See § 408.224(e) for an explanation of how we determine the monthly amount of your benefit income if you receive a lump-sum payment.

§ 408.222 How does your other benefit income affect your SVB payment?

(a) *Income began before you qualify for SVB.* If, at the time you file your application for SVB, your other benefit income is equal to, or more than, the maximum SVB payment possible (see § 408.505), we will deny your SVB claim. If it is less, we will reduce any monthly SVB payments you become entitled to by the amount of your other benefit income (see § 408.510 for a description of how we make the reduction).

(b) *Income begins after you qualify for SVB.* If you have been determined to be qualified for SVB, we will reduce your monthly SVB payment by the amount of your other benefit income (see § 408.510 for a description of how we make the reduction).

§ 408.224 How do we determine the monthly amount of your other benefit income?

If your other benefit income is paid in other than monthly amounts, we will compute the equivalent monthly amount as follows:

(a) *Weekly payments.* We multiply the amount of the weekly payment by 52 and divide by 12 to determine the equivalent monthly payment amount.

(b) *Bi-weekly payments.* We multiply the amount of the bi-weekly payment by 26 and divide by 12 to determine the equivalent monthly payment amount.

(c) *Quarterly payments.* We multiply the amount of the quarterly payment by 4 and divide by 12 to determine the equivalent monthly payment amount.

(d) *Semi-annual payments.* We multiply the amount of the semi-annual payment by 2 and divide by 12 to determine the equivalent monthly payment amount.

(e) *Lump sum payment.* If the paying agency will not prorate the lump sum to determine the monthly amount, we will compute the amount as follows:

(1) *If the payment is for a specific period.* We divide the lump sum by the number of months in the period for which the payment was made to determine the equivalent monthly payment amount.

(2) *If the payment is for a lifetime or for an unspecified period.* We divide the

lump sum amount by your life expectancy in months at the time the lump sum is paid.

§ 408.226 What happens if you begin receiving additional benefit income after you begin receiving SVB?

If you begin receiving other benefit income after you become entitled to SVB, we will reduce your SVB by the amount of those payments only if you were receiving similar benefits from the same or a related source during the 12-month period before you filed for SVB. (See § 408.220(b) for a description of when we consider other benefit income to be from the same or a related source.)

Residence Outside the United States

§ 408.228 When do we consider you to be residing outside the United States?

(a) *Effect of residency on SVB eligibility.* You can be paid SVB only for those months in which you are residing outside the United States but you can not be paid for a month that is earlier than the month in which you filed your application for SVB. You are residing outside the United States in a month only if you reside outside the United States on the first day of that month. For SVB purposes, you can be a resident of only one country at a time. You cannot, for example, maintain a residence in the United States and a residence outside the United States at the same time.

(b) *Definition of residing outside the United States.* We consider you to be residing outside the United States if you:

(1) have established an actual dwelling place outside the United States; and

(2) intend to continue to live outside the United States.

(c) *When we will assume you intend to continue living outside the United States.* If you tell us, or the evidence shows, that you intend to reside outside the United States for at least 6 months, we will assume you meet the intent requirement in paragraph (b)(2) of this section. Otherwise we will assume, absent convincing evidence to the contrary, that your stay is temporary and that you are not residing outside the United States.

§ 408.230 When must you begin residing outside the United States?

(a) *4-month rule.* Except as provided in paragraph (b) of this section, you must begin residing outside the United States by the end of the fourth calendar month after the month in which the notice explaining that you are qualified for SVB is dated, as explained in § 408.206. If you do not establish residence outside the United States within this 4-month period, we will deny your claim for SVB. You will have to file a new application and meet all the requirements for qualification and entitlement based on the new application to become entitled to SVB.

(b) *When we will extend the 4-month period.* We will extend the 4-month period for establishing residence outside the United States if you are in the United States and are appealing either:

(1) A determination that we made on your SVB claim, or

(2) A determination that we made on a title II and/or a title XVI claim but only if the determination affects your SVB qualification.

(c) *How we extend the 4-month period.* If the requirements in paragraph (b) of this section are met, the 4-month period begins with the month after the month in which your notice of our decision on your appeal is dated or the month in which your appeal rights have expired.

§ 408.232 When do you lose your foreign resident status?

(a) *General rule.* We consider you to have lost or abandoned your residence outside the United States if you:

(1) Enter the United States and stay for more than 1 full calendar month (see § 408.234 for exceptions to this rule);

(2) Tell us that you no longer consider yourself to be residing outside the United States; or

(3) Become eligible (as defined by title XVI) for SSI benefits.

(b) *Resumption of SVB following a period of U.S. residence.* Once you lose or abandon your residence outside the United States, you cannot receive SVB again until you meet all the requirements for SVB qualification and reestablish your residence outside the United States.

Example: You leave your home outside the United States on June 15 to visit your son in the United States and return to your home abroad on August 15. Your SVB payments will continue for the months of June and July. However, because you were in the United States for the entire calendar month of July (i.e., all of the first day through all of the last day of July), you are not entitled to an SVB payment for the month of August. Your SVB payments resume with September, the month you reestablished your residence outside the United States.

§ 408.234 Can you continue to receive SVB payments if you stay in the United States for more than 1 full calendar month?

(a) *When we will consider your foreign residence to continue.* We will continue to consider you to be a foreign resident and will continue to pay you SVB payments even if you have been in the United States for more than 1 full calendar month if you—

(1) Made a good faith effort to return to your home abroad within that 1-month period but were prevented from doing so by circumstances beyond your control (*e.g.*, sickness, a death in the family, a transportation strike, etc.); or

(2) Are exercising your option to be personally present in the United States to present testimony and other evidence in the appeal of an SSA decision on a claim filed under any SSA-administered program. This extension applies only as long as you are participating in activities where you are providing testimony and other evidence in connection with a determination or decision at a specific level of the appeals process (*e.g.*, a hearing before an administrative law judge).

(b) *When you must return to your home abroad.* When the circumstance/event that was the basis for the continuation of your SVB payments ceases to exist, you must return to your home abroad within 1 full calendar month. If you do not return to your home abroad within this 1-calendar-month period, we will consider you to have lost or abandoned your foreign resident status for SVB purposes and we will stop your SVB payments with the first day of the month following the first full calendar month you remain in the United States.

Subpart C—Filing Applications

Authority: Secs. 702(a)(5), 802, 806, and 810 of the Social Security Act (42 U.S.C. 902(a)(5), 1102, 1106 and 1110).

Filing Your Application

§ 408.301 What is this subpart about?

This subpart contains our rules about filing applications for SVB. It explains what an application is, who may sign it, where and when it must be signed and filed, the period of time it is in effect, and how it may be withdrawn. This subpart also explains when a written statement or an oral inquiry may be considered to establish your application filing date.

§ 408.305 Why do you need to file an application to receive benefits?

In addition to meeting other requirements, you must file an application to become entitled to SVB. If you believe you may be entitled to SVB, you should file an application. Filing an application will—

(a) Permit us to make a formal decision on whether you qualify for SVB;

(b) Assure that you receive SVB for any months you are entitled to receive payments; and

(c) Give you the right to appeal if you are dissatisfied with our determination.

§ 408.310 What makes an application a claim for SVB?

To be considered a claim for SVB, an application must generally meet all of the following conditions:

(a) It must be on the prescribed SVB application form (SSA–2000–F6, Application for Special Benefits for World War II Veterans).

(b) It must be completed and filed with SSA as described in § 408.325.

(c) It must be signed by you or by someone who may sign an application for you as described in § 408.315.

(d) You must be alive at the time it is filed.

§ 408.315 Who may sign your application?

(a) *When you must sign.* If you are mentally competent, and physically able to do so, you must sign your own application.

(b) *When someone else may sign for you.* (1) If you are mentally incompetent, or physically unable to sign, your application may be signed by a court-appointed representative or a person who is responsible for your care, including a relative. If you are in the care of an institution, the manager or principal officer of the institution may sign your application.

(2) If it is necessary to protect you from losing benefits and there is good cause why you could not sign the application, we may accept an application signed by someone other than you or a person described in paragraph (b)(1) of this section.

Example: Mr. Smith comes to a Social Security office a few days before the end of a month to file an application for SVB for his neighbor, Mr. Jones. Mr. Jones, a 68-year-old widower, just suffered a heart attack and is in the hospital. He asked Mr. Smith to file the application for him. We will accept an application signed by Mr. Smith because it would not be possible to have Mr. Jones sign and file the application until the next calendar month and a loss of one month's benefits would result.

§ 408.320 What evidence shows that a person has authority to sign an application for you?

(a) A person who signs an application for you will be required to give us evidence of his or her authority to sign the application for you under the following rules:

(1) If the person who signs is a court-appointed representative, he or she must give us a certificate issued by the court showing authority to act for you.

(2) If the person who signs is not a court-appointed representative, he or she must give us a statement describing his or her relationship to you. The statement must also describe the extent to which the person is responsible for your care.

(3) If the person who signs is the manager or principal officer of an institution which is responsible for your care, he or she must give us a statement indicating the person's position of responsibility at the institution.

(b) We may, at any time, require additional evidence to establish the authority of a person to sign an application for you.

§ 408.325 When is your application considered filed?

(a) *General rule.* We consider an application for SVB filed on the day it is received by an SSA employee at one of our offices, by an SSA employee who is authorized to receive it at a place other than one of our offices, or by any office of the U.S. Foreign Service or by the Veterans Affairs Regional Office in the Philippines.

(b) *Exceptions.* (1) When we receive an application that is mailed, we will use the date shown by the United States postmark as the filing date if using the date we receive it would result in your entitlement to additional benefits. If the postmark is unreadable, or there is no United States postmark, we will use the date the application is signed (if dated) or 5 days before the day we receive the signed application, whichever date is later.

(2) We consider an application to be filed on the date of the filing of a written statement or the making of an oral inquiry under the conditions in §§ 408.340 and 408.345.

(3) We will establish a deemed filing date of an application in a case of misinformation under the conditions described in § 408.351. The filing date of the application will be a date determined under § 408.351(b).

§ 408.330 How long will your application remain in effect?

Your application for SVB will remain in effect from the date it is filed until we make a final determination on it, unless there is a hearing decision on your application. If there is a hearing decision, your application will remain in effect until the hearing decision is issued.

Filing Date Based on Written Statement or Oral Inquiry

§ 408.340 When will we use a written statement as your filing date?

If you file with us under the rules stated in § 408.325 a written statement, such as a letter, indicating your intent to claim SVB, we will use the filing date of the written statement as the filing date of your application. If the written statement is mailed, we will use the date the statement was mailed to us as shown by the United States postmark. If the postmark is unreadable or there is no United States postmark, we will use the date the statement is signed (if dated) or 5 days before the day we receive the written statement, whichever date is later, as the filing date. In order for us to use your written statement to protect your filing date, the following requirements must be met:

(a) The statement indicates your intent to file for benefits.

(b) The statement is signed by you, your spouse, or a person described in § 408.315.

(c) You file an application with us on an application form as described in § 408.310(a), or one is filed for you by a person described in § 408.315, within 60 days after the date of a notice we will send advising of the need to file an application. The notice will say that we will make an initial determination of your qualification if an application form is filed within 60 days after the date of the notice. We will send the notice to you. However, if it is clear from the information we receive that you are mentally incompetent, we will send the notice to the person who submitted the written statement.

(d) You are alive when the application is filed.

§ 408.345 When will we use the date of an oral inquiry as your application filing date?

We will use the date of an oral inquiry about SVB as the filing date of your application for SVB if the following requirements are met:

(a) The inquiry asks about your entitlement to SVB.

(b) The inquiry is made by you, your spouse, or a person who may sign an application on your behalf as described in § 408.315.

(c) The inquiry, whether in person or by telephone, is directed to an office or an official described in § 408.325(a).

(d) You, or a person on your behalf as described in § 408.315, file an application on a prescribed form within 60 days after the date of the notice we will send telling of the need to file an application. The notice will say that we will make an initial determination on whether you qualify for SVB if an application form is filed within 60 days after the date of the notice. However, if it is clear from the information we receive that you are mentally incompetent, we will send the notice to the person who made the inquiry.

(e) You are alive when the prescribed application is filed.

Deemed Filing Date Based on Misinformation

§ 408.351 What happens if we give you misinformation about filing an application?

(a) *General rule.* You may have considered applying for SVB, for yourself or another person and you may have contacted us in writing, by telephone or in person to inquire about filing an application for SVB. It is possible that in responding to your inquiry, we may have given you misinformation about qualification for such benefits that caused you not to file an application at that time. If this happened and use of that date will result in entitlement to additional benefits, and you later file an application for SVB with us, we may establish an earlier filing date as explained in paragraphs (b) through (f) of this section.

(b) *Deemed filing date of an application based on misinformation.* Subject to the requirements and conditions in paragraphs (c) through (f) of this section, we may establish a deemed filing date of an application for SVB under the following provisions.

(1) If we determine that you failed to apply for SVB because we gave you misinformation about qualification for or entitlement to such benefits, we will deem an application for such benefits to have been filed with us on the later of—

(i) The date on which we gave you the misinformation; or

(ii) The date on which all of the requirements for qualification to SVB were met, other than the requirement of filing an application.

(2) Before we may establish a deemed filing date of an application for SVB under paragraph (b)(1) of this section, you or a person described in § 408.315 must file an application for such benefits.

(c) *Requirements concerning the misinformation.* We apply the following requirements for purposes of paragraph (b) of this section.

(1) The misinformation must have been provided to you by one of our employees while he or she was acting in his or her official capacity as our employee. For purposes of this section, an employee includes an officer of SSA, an employee of a U.S. Foreign Service office, and an employee of the SSA Division of the Veterans Affairs Regional Office in the Philippines who is authorized to take and develop Social Security claims.

(2) Misinformation is information which we consider to be incorrect, misleading, or incomplete in view of the facts which you gave to the employee, or of which the employee was aware or should have been aware, regarding your particular circumstances. In addition, for us to find that the information you were given was incomplete, the employee must have failed to provide you with the appropriate, additional information which he or she would be required to provide in carrying out his or her official duties.

(3) The misinformation may have been provided to you orally or in writing.

(4) The misinformation must have been provided to you in response to a specific request by you to us for information about your qualification for SVB.

(d) *Evidence that misinformation was provided.* We will consider the following evidence in making a determination under paragraph (b) of this section.

(1) *Preferred evidence.* Preferred evidence is written evidence which relates directly to your inquiry about your qualification for SVB and which shows that we gave you misinformation which caused you not to file an application. Preferred evidence includes, but is not limited to, the following—

(i) A notice, letter or other document which was issued by us and addressed to you; or

(ii) Our record of your telephone call, letter or in-person contact.

(2) *Other evidence.* In the absence of preferred evidence, we will consider other evidence, including your statements about the alleged misinformation, to determine whether we gave you misinformation, which caused you not to file an application. We will not find that we gave you misinformation, however, based solely on your statements. Other evidence which you provide or which we obtain must support your statements. Evidence which we will consider includes, but is not limited to, the following—

(i) Your statements about the alleged misinformation, including statements about—

(A) The date and time of the alleged contact(s);

(B) How the contact was made, *e.g.*, by telephone or in person;

(C) The reason(s) the contact was made;

(D) Who gave the misinformation; and

(E) The questions you asked and the facts you gave us, and the questions we asked and the information we gave you, at the time of the contact;

(ii) Statements from others who were present when you were given the alleged misinformation, *e.g.*, a neighbor who accompanied you to our office;

(iii) If you can identify the employee or the employee can recall your inquiry about benefits—

(A) Statements from the employee concerning the alleged contact, including statements about the questions you asked, the facts you gave, the questions the employee asked, and the information provided to you at the time of the alleged contact; and

(B) Our assessment of the likelihood that the employee provided the alleged misinformation;

(iv) An evaluation of the credibility and the validity of your allegations in conjunction with other relevant information; and

(v) Any other information regarding your alleged contact.

(e) *Information which does not constitute satisfactory proof that misinformation was given.* Certain kinds of information will not be considered satisfactory proof that we gave you misinformation which caused you not to file an application. Examples of such information include—

(1) General informational pamphlets that we issue to provide basic program information;

(2) General information which we review or prepare but which is disseminated by the media, *e.g.*, radio, television, magazines, and newspapers; and

(3) Information provided by other governmental agencies, *e.g.*, the Department of Veterans Affairs (except for certain employees of the SSA Division of the Veterans Affairs Regional Office in the Philippines as provided in paragraph (c)(1) of this section), the Department of Defense, State unemployment agencies, and State and local governments.

(f) *Claim for benefits based on misinformation.* You may make a claim for SVB based on misinformation at any time. Your claim must contain information that will enable us to determine if we did provide misinformation to you about qualification for SVB which caused you not to file an application. Specifically, your claim must be in writing and it must explain what information was provided; how, when and where it was provided and by whom; and why the information caused you not to file an application. If you give us this information, we will make a determination on such a claim for benefits if all of the following conditions are also met.

(1) An application for SVB is filed with us by you or someone described in § 408.315 who may file. The application must be filed after the alleged

misinformation was provided. This application may be—

(i) An application on which we have made a previous final determination or decision awarding SVB, but only if the claimant continues to be entitled to benefits based on that application;

(ii) An application on which we have made a previous final determination or decision denying the benefits, but only if such determination or decision is reopened; or

(iii) A new application on which we have not made a final determination or decision.

(2) The establishment of a deemed filing date of an application for benefits based on misinformation could result in entitlement to benefits or payment of additional benefits.

(3) We have not made a previous final determination or decision to which you were a party on a claim for benefits based on alleged misinformation involving the same facts and issues. This provision does not apply, however, if the final determination or decision may be reopened.

Withdrawal of Application

§ 408.355 Can you withdraw your application?

(a) *Request for withdrawal filed before a determination is made.* You may withdraw your application for SVB before we make a determination on it if—

(1) You, or a person who may sign an application for you under § 408.315, file a written request for withdrawal at a place described in § 408.325; and

(2) You are alive at the time the request is filed.

(b) *Request for withdrawal filed after a determination is made.* An application may be withdrawn after we make a determination on it if you repay all benefits already paid based on the application being withdrawn or we are satisfied that the benefits will be repaid.

(c) *Request for withdrawal filed after your death.* An application may be withdrawn after you die, regardless of whether we have made a determination on it, if you die before we certify your SVB entitlement to the Treasury Department for payment.

(d) *Effect of withdrawal.* If we approve your request to withdraw your application, we consider that the application was never filed. If we disapprove your request for withdrawal, we treat your application as though you did not file a request for withdrawal.

§ 408.360 Can you cancel your request to withdraw your application?

You may request to cancel your request to withdraw your application and have your application reinstated if all of the following requirements are met:

(a) You, or someone who may sign an application for you under § 408.315, file a written request for cancellation at a place described in § 408.325;

(b) You are alive at the time you file your request for cancellation; and

(c) A cancellation request received after we have approved your withdrawal must be filed no later than 60 days after the date of the notice of approval.

Subpart D—Evidence Requirements

Authority: Secs. 702(a)(5), 806, and 810 of the Social Security Act (42 U.S.C. 902(a)(5), 1006, and 1010).

General Information

§ 408.401 What is this subpart about?

We cannot determine your entitlement to SVB based solely on your statements about your qualification for benefits or other facts concerning payments to you. We will ask you for specific evidence or additional information. We may verify the evidence you give us with other sources to ensure that it is correct. This subpart contains our rules about the evidence you need to give us when you claim SVB.

§ 408.402 When do you need to give us evidence?

When you apply for SVB, we will ask you for any evidence we need to make sure that you meet the SVB qualification and entitlement requirements. After you begin receiving SVB, we may ask you for evidence showing whether your SVB payments should be reduced or stopped. We will help you get any documents you need but do not have. If your evidence is a foreign-language record or document, we can have it translated for you. The evidence you give us will be kept confidential and not disclosed to anyone but you except under the rules set out in part 401 of this chapter. You should also be aware that section 811 of the Act provides criminal penalties for misrepresenting the facts or for making false statements to obtain SVB payments for yourself or someone else, or to continue entitlement to benefits.

§ 408.403 Where should you give us your evidence?

You should give your evidence to the people at a Social Security Administration office. In the Philippines, you should give your evidence to the people at the Veterans Affairs Regional Office. Elsewhere outside the United States, you should give your evidence to the people at the nearest U.S. Social Security office or a United States Foreign Service Office.

§ 408.404 What happens if you fail to give us the evidence we ask for?

(a) *You have not yet qualified for SVB.* Generally, we will ask you to give us specific evidence or information by a certain date to prove that you qualify for SVB or to prove your foreign residence. If we do not receive the evidence or information by that date, we may decide that you do not qualify for SVB or may not receive SVB and deny your claim.

(b) *You have qualified for or become entitled to SVB.* If you have already qualified for or become entitled to SVB, we may ask you to give us information by a specific date to decide whether you should receive benefits or, if you are already receiving benefits, whether your benefits should be stopped or reduced. If you do not give us the requested evidence or information by the date given, we may decide that you are no longer entitled to benefits or that your benefits should be stopped or reduced.

(c) *If you need more time.* You should let us know if you are unable to give us the evidence or information within the specified time and explain why there will be a delay. If this delay is due to illness, failure to receive timely evidence you have asked for from another source, or a similar circumstance, we will give you additional time to give us the evidence.

§ 408.405 When do we require original records or copies as evidence?

(a) *General rule.* To prove your qualification for or continuing entitlement to SVB, you may be asked to show us an original document or record. These original documents or records will be returned to you after we have photocopied them. We will also accept copies of original records that are properly certified and some uncertified birth certifications. These types of records are described in paragraphs (b) and (c) of this section.

(b) *Certified copies of original records.* You may give us copies of original records or extracts from records if they are certified as true and exact copies by:

(1) The official custodian of the record;

(2) A Social Security Administration employee authorized to certify copies;

(3) A Veterans Affairs employee if the evidence was given to that agency to obtain veteran's benefits;

(4) An employee of the Veterans Affairs Regional Office, Manila, Philippines who is authorized to certify copies; or

(5) A U.S. Consular Officer or employee of the Department of State

authorized to certify evidence received outside the United States.

(c) *Uncertified copies of original birth records.* You may give us an uncertified photocopy of a birth registration notification as evidence of age where it is the practice of the local birth registrar to issue them in this way.

§ 408.406 How do we evaluate the evidence you give us?

When you give us evidence, we examine it to see if it is convincing evidence. This means that unless we have information in our records that raises a doubt about the evidence, other evidence of the same fact will not be needed. If the evidence you give us is not convincing by itself, we may ask you for additional evidence. In evaluating whether the evidence you give us is convincing, we consider such things as whether:

(a) The information contained in the evidence was given by a person in a position to know the facts:

(b) There was any reason to give false information when the evidence was created;

(c) The information in the evidence was given under oath, or with witnesses present, or with the knowledge that there was a penalty for giving false information;

(d) The evidence was created at the time the event took place or shortly thereafter;

(e) The evidence has been altered or has any erasures on it; and

(f) The information contained in the evidence agrees with other available evidence including our records.

Age

§ 408.410 When do you need to give us evidence of your age?

To qualify for SVB you must establish that you were age 65 or older on December 14, 1999, the date on which P.L. 106–169 was enacted into law. If we have already established your age or date of birth in connection with your claim for other benefit programs that we administer, you will not have to give us evidence of your age for your SVB claim. If we have not established your age or date of birth, you must give us evidence of your age or date of birth. In the absence of information to the contrary, we generally will not ask for additional evidence of your age or date of birth if you state that you are at least age 68, and you submit documentary evidence that is at least 3 years old when the application is filed and supports your statement.

§ 408.412 What kinds of evidence of age do you need to give us?

For a description of the kinds of evidence of age you may need to give us, see § 416.802 of this chapter.

§ 408.413 How do we evaluate the evidence of age you give us?

In evaluating the evidence of age you give us, we use the rules in § 416.803 of this chapter.

Military Service

§ 408.420 What evidence of World War II military service do you need to give us?

(a) *Kinds of evidence you can give us.* To show that you are a World War II veteran as defined in § 408.216, you can give us any of the documents listed in § 404.1370(b)(1) through (5) of this chapter. However, depending on the type of document you give us and what the document shows, we may verify your military service, or the dates of your service, with the National Personnel Records Center (NPRC) in St. Louis, Missouri. If we do, we will use the information in NPRC's records to determine whether you meet the military service requirements for SVB.

(b) *What the evidence must show.* When you file an application for SVB, you must give us evidence of your World War II military service. The evidence you give us must show:

(1) Your name;

(2) The branch of service in which you served;

(3) The dates of your military service;

(4) Your military service serial number;

(5) The character of your discharge; and

(6) If your service was in the organized military forces of the Government of the Commonwealth of the Philippines (including the organized guerrilla forces), the period of your service that was under the control of U.S. Armed Forces.

SSI Eligibility

§ 408.425 How do we establish your eligibility for SSI?

To qualify for SVB, you must have been eligible for SSI for the month of December 1999, the month in which P.L. 106–169 was enacted, and for the month in which you filed your application for SVB. You do not have to submit evidence of this. We will use our SSI record of your eligibility to determine if you meet these requirements.

Other Benefit Income

§ 408.430 When do you need to give us evidence of your other benefit income?

If you tell us or if we have information indicating that you are receiving other benefit income that could affect your qualification for or the amount of your SVB payments, we will ask you to give us evidence of that income as explained in § 408.432.

§ 408.432 What kind of evidence of your other benefit income do you need to give us?

As evidence of your other benefit income, we may require a document such as an award notice or other letter from the paying agency or written notification from the former employer, insurance company, etc. The evidence should show the benefit payable, the current amount of the payment, and the date the payment began.

Residence

§ 408.435 How do you prove that you are residing outside the United States?

(a) *General rule.* To establish that you are residing outside the United States for SVB purposes, you must give us all of the following:

(1) Evidence of the date on which you arrived in the country in which you are residing;

(2) A statement signed by you showing the address at which you are living and that you intend to continue living there; and

(3) Evidence that you are actually living at the address given in your signed statement.

(b) *Evidence of the date you entered the foreign country.* To establish the date you arrived in the country in which you are residing, you can give us evidence such as:

(1) A visa or passport showing the date you entered that country;

(2) Your plane ticket showing the date you arrived in that country; or

(3) An entry permit showing the date you entered that country.

(c) *Evidence of your actual place of residence.* To establish your actual place of residence, you can give us evidence such as:

(1) A lease agreement showing where you live;

(2) Rental or mortgage receipts;

(3) Utility or other bills addressed to you at the address where you live;

(4) A signed statement from a local official showing that he or she knows where you live, when you began living there and how he or she knows this information; or

(5) A Standard Form 1199A, Direct Deposit Sign-Up Form, showing your

address abroad and signed by an official of the financial institution after the date you arrived in the country in which you will be residing.

§ 408.437 How do you prove that you had good cause for staying in the United States for more than 1 full calendar month?

(a) *General rule.* If you believe that you meet the requirements in § 408.234 and that you should continue to receive SVB payments even though you have been in the United States for more than 1 full calendar month, you must give us evidence that you had good cause for staying in the United States.

(b) *Circumstances prevent you from returning to your home abroad.* To prove that you had good cause for staying in the United States for more than 1 full calendar month, you must give us evidence of your good faith effort to return to your home abroad before the 1-month period had elapsed and of the circumstances/event which prevented your return to your home abroad.

(1) *Evidence of your good faith effort to return to your home abroad.* Evidence of your plans to return to your home abroad can include, but is not limited to:

(i) A plane ticket showing that you intended to return to your home abroad before the expiration of 1 full calendar month; or

(ii) Notice from a travel agency or airline confirming the cancellation of your reservation to return to your home abroad on a date within 1 full calendar month.

(2) *Evidence of the circumstances preventing your return to your home abroad.* The evidence we will accept from you to support the circumstance or event that prevented you from returning to your home abroad will depend on the reason you are staying in the United States. It can include, but is not limited to, a:

(i) Newspaper article or other publication describing the event or natural disaster which prevented your return; or

(ii) Doctor's statement, etc. showing that you are unable to travel; or

(iii) Death certificate or notice if you are staying in the United States to attend the funeral of a member of your family.

(c) *You are appealing a decision we made.* To establish that you had good cause to stay in the United States for more than 1 full calendar month because you want to appear in person at the appeal of a decision on a claim filed under a program administered by the Social Security Administration, you must submit evidence of this. The evidence must identify the appeal proceeding and the dates you are scheduled to attend.

(d) *When we may ask for more evidence.* If you stay in the United States for several months, we may ask you to give us more evidence to prove that you are still unable to return to your home abroad.

Subpart E—Amount and Payment of Benefits

Authority: Secs. 702(a)(5), 801, 805, and 810 of the Social Security Act (42 U.S.C. 902(a)(5), 1001, 1005, and 1010).

§ 408.501 What is this subpart about?

This subpart explains how we compute the amount of your monthly SVB payment, including how we reduce your payments if you receive other benefit income. It also explains how we pay benefits under the SVB program.

§ 408.505 How do we determine the amount of your SVB payment?

(a) *Maximum SVB payment.* The maximum monthly SVB payment is equal to 75% of the FBR for an individual under title XVI of the Act. See § 416.410 of this chapter.

(b) *Cost-of-living adjustments in the FBR.* The maximum SVB amount will increase whenever there is a cost-of-living increase in the SSI FBR under the provisions of § 416.405 of this chapter. The basic SVB amount following such an increase is equal to 75% of the increased FBR.

(c) *When we will reduce the amount of your basic benefit.* We will reduce your basic benefit by the amount of the other benefit income you receive in that month, as explained in § 408.510.

§ 408.510 How do we reduce your SVB when you receive other benefit income?

(a) *Amount of the reduction.* If you receive other benefit income as defined in § 408.220, we will reduce your SVB payment by the amount of the other benefit income you receive in that month. The reduction is on a dollar-for-dollar and cents-for-cents basis. We do not round SVB payment amounts except as described in paragraph (b) of this section.

(b) *Minimum benefit amount.* If the reduction described in paragraph (a) of this section results in a benefit amount that is greater than zero but less than $1.00, we will pay you a benefit of $1.00 for that month.

§ 408.515 When do we make SVB payments?

SVB payments are made on the first day of each month and represent payment for that month. If the first day of the month falls on a Saturday, Sunday, or Federal legal holiday, payment will be made on the first day preceding such day that is not a Saturday, Sunday, or Federal legal holiday.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS 162–1162; FRL–7270–3]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a State Implementation Plan (SIP) revision submitted by the state of Kansas. This revision updates the state's air monitoring surveillance plan to include the particulate matter provisions EPA added to the Federal requirements in 1997. Approval of the state's plan will make it consistent with the Federal requirements.

In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by September 30, 2002.

ADDRESSES: Comments may be mailed to Kim Johnson, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Kim Johnson at (913) 551–7975.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: August 12, 2002.

William A. Spratlin,

Acting Regional Administrator, Region 7.

[FR Doc. 02–22088 Filed 8–29–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Wasatch Front Columbia Spotted Frog as Threatened Throughout Its Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month finding on a petition to amend the List of Endangered and Threatened Wildlife. After review of all available scientific and commercial information, the Service has determined that, pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), listing the Wasatch Front population of the Columbia spotted frog (*Rana luteiventris*) is not warranted.

DATES: The finding announced in this notice was approved on August 23, 2002. Comments and information may be submitted until further notice.

ADDRESSES: Questions, comments, and additional information regarding this finding should be sent to Mr. Henry Maddux, Field Supervisor, U.S. Fish and Wildlife Service, 2369 West Orton Circle, West Valley City, UT 84119. Comments and materials received will be available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jessica Gourley, e-mail <*jess_gourley@fws.gov*>, or Laura Romin, email <*laura_romin@fws.gov*>, (see **ADDRESSES** section), telephone (801) 975–3330.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 1989, the Service received a petition from the Board of Directors of the Utah Nature Study Society requesting the Service to add the spotted frog (then referred to as *Rana pretiosa*) to the List of Threatened and Endangered Species and to specifically consider the status of the Wasatch Front, Utah, population. The petitioners stated that ''the spotted frog's present range in the lower 48 states is greatly reduced from its historic range,'' and that ''the current status [of the species] is greatly reduced from historic times.'' The petitioners further indicated that the ''scientific importance of the spotted frog is that this species lives in many disjunct populations that reflect Pleistocene populations.'' Threats identified by the petitioners included loss of habitat (caused by dam and reservoir construction, alteration of drainage patterns, urban and agricultural use of water, and highway and bridge construction); introductions of exotic species; lack of inventories of native wetland animals; insufficient impact analyses conducted prior to development; and inadequate mitigation activities. In addition, the petitioners alluded that Federal and State laws and regulations do not adequately protect wetlands and riparian areas for the spotted frog.

The Service published a notice of a 90-day finding in the **Federal Register** (54 FR 42529) on October 17, 1989, concluding there was substantial information that the petitioned action may be warranted. Concurrent with publishing the notice, the Service initiated a status review. The period of the status review was prolonged because, throughout its wide range, there was a lack of quantitative information documenting the spotted frog's current distribution and status. Genetics research raised further questions regarding the appropriateness of the then-current taxonomic classification of spotted frog populations.

A notice of the 12-month petition finding was published in the **Federal Register** (58 FR 27260) on May 7, 1993. In the 12-month petition finding, the Service determined that listing the spotted frog as threatened in some portions of its range was warranted but precluded by other higher priority listing actions. Based on geographic and climatic separation and supported by genetic separation (Green 1991), the Service found five Distinct Population Segments (DPS) of spotted frogs throughout its range—(1) the main population (Alaska, British Columbia, Alberta, Wyoming, Montana, north and central Idaho, eastern Washington, and northeastern Oregon), (2) the Great Basin (southern Idaho and Nevada), (3) West Coast (western Washington, Oregon, Idaho, and Nevada), (4) the Wasatch Front, Utah, and (5) the West Desert, Utah. Separation of the West Desert and Wasatch Front DPSs in Utah is supported by geographic isolation in addition to ecological and demographic distinctiveness (Bos and Sites 2001).

Four of the five DPSs (all but the main population) were found to be warranted but precluded by higher listing priorities; both Utah populations were designated as candidates for listing. In Utah, the Wasatch Front population was assigned a listing priority number of three because the magnitude of the threats were high and imminent, while the West Desert population was assigned a listing priority of nine because of moderate to low threats.

On November 15, 1994, the Service published a Candidate Notice of Review in the **Federal Register** for the four candidate DPSs (59 FR 58982). The listing priority for the West Desert DPS was increased from nine to six. In the Service's September 19, 1997, Candidate Notice of Review, the scientific and common name of the Wasatch Front, West Desert, and Great Basin DPSs were changed to *Rana luteiventris* and Columbia spotted frog respectively, based on new genetics information (Green *et al.* 1997).

On November 28, 1997, the Service announced the availability of a Draft Conservation Agreement for the Wasatch Front and West Desert populations (Utah) of the Columbia spotted frog (*Rana luteiventris*) (62 FR 63375). The Service received a request to extend the comment period, and on December 24, 1997, announced that the comment period on the Draft Conservation Agreement had been extended until January 16, 1998 (62 FR 67398). The Service subsequently signed the Conservation Agreement on February 13, 1998, in cooperation with the Utah Division of Wildlife Resources (UDWR), Bureau of Land Management, Bureau of Reclamation, Utah Reclamation Mitigation and Conservation Commission, Central Utah Water Conservancy District, and the Confederated Tribes of the Goshute Federation.

The goal of this interagency Conservation Agreement is to ensure the long-term conservation of the Columbia spotted frog within its historical range in Utah. The Conservation Agreement established a mechanism for the recovery of the spotted frog through interagency cooperation, coordination of conservation efforts, and development of recovery priorities. Due to numerous activities and studies in addition to and pursuant with the Conservation Agreement, we determined that the

status of the Columbia spotted frog in Utah had improved and no longer warranted listing under the Act on April 2, 1998 (63 FR 16218). With this finding, both DPSs of Columbia spotted frogs in Utah were removed as candidates for listing on October 25, 1999 (64 FR 57533).

On June 8, 1999, a complaint was filed by the Biodiversity Legal Foundation and Peter Hovingh challenging the not warranted finding as violating the Act and the Administrative Procedure Act. The complaint alleged that the not warranted finding was inconsistent with the 8 years of prior determinations by the Service; that the Wasatch Front population of the Columbia spotted frog deserved listing under the Act; that the Wasatch Front population of the Columbia spotted frog had declined during the course of the 8-year administrative process; that the Conservation Agreement contained future and voluntary actions that had yet to be implemented and had not proven successful at protecting the Wasatch Front population of the Columbia spotted frog; and that all measures identified by the Service as having previously been implemented had either failed, had been rejected by the Service as inadequate, or were adopted to mitigate specific projects that had already destroyed Columbia spotted frogs and their wetland and aquatic habitat.

On August 6, 2001, the plaintiffs and the Government reached a settlement regarding this complaint. The settlement stipulated that we remand for reconsideration the 1998 ''not warranted'' finding and start a new status review and 12-month finding on the Wasatch Front population of the Columbia spotted frog to be completed by July 31, 2002. The Service subsequently published a notice of intent to conduct the 12-month finding on September 10, 2001 (66 FR 47034). The settlement also stated that we would not vacate our previous determination in the interim. Candidate status of this species would not be restored unless and until we determine in the revised 12-month finding that the species is warranted for listing, or warranted but precluded from listing by higher priority listing actions.

Following this settlement, we initiated a review to evaluate the status of the Columbia spotted frog on the Wasatch Front. Comments were received, evaluated, and incorporated where appropriate into this status review. Information included published and unpublished reports, manuscripts, books and data, memoranda, letters, phone communications, email correspondence, and information gathered at meetings. In addition, persons who were species experts on the Columbia spotted frog were provided opportunity to comment on the data used in this report to ensure it was the most accurate and updated information available and that it was interpreted accurately. This status review is available upon request from the Utah Field Office (see **ADDRESSES** above).

The Columbia spotted frog belongs to the family of true frogs, the Ranidae. Color and pattern descriptions of individuals from Utah include brownish-black dorsal coloration with little to no spotting pattern (Colburn, U.S. Fish and Wildlife Service, pers. comm. 1992). Pigmentation on their abdomens varies from yellow to red (Turner 1957). Columbia spotted frogs along the Wasatch Front generally possess a salmon color ventrally, while West Desert and Sanpete County, Utah, populations generally have a yellow to yellow-orange color ventrally.

The spotted frog is closely associated with water (Dumas 1966, Nussbaum *et al.* 1983). Habitat includes the marshy edges of ponds, lakes, slow-moving cool water streams and springs (Licht 1974; Nussbaum *et al.* 1983; Morris and Tanner 1969; Hovingh 1987).

The overall distribution of the Columbia spotted frog is continuous throughout extreme southeastern Alaska, southwestern Yukon, northern British Columbia, and western Alberta; and south through Washington (east of the Cascades), eastern Oregon, Idaho, and western Montana. Its southern extent includes disjunct populations in central and northeastern Nevada, southwestern Idaho, western and north-central Wyoming, and northern Utah (Stebbins 1985; Green *et al.* 1996, 1997, Tanner 1931, Linsdale 1940, Banta 1965, Turner and Dumas 1972, Hovingh 1993, Ross *et al.* 1993, 1994). These disjunct populations are highly fragmented, occurring on isolated mountains and in arid-land springs.

Systematic and taxonomic relationships of spotted frogs occurring in Utah to other spotted frog populations have been described in several manners. Two subspecies of *Rana pretiosa* were described originally (Thompson 1913, Wright and Wright 1949). These two subspecies, *R. p. pretiosa* and *R. p. luteiventris*, were described based on pigmentation characteristics of frogs. As additional specimens were examined, variability of characteristics within and between populations was described (Morris and Tanner 1969). Green et al. (1996) examined allozyme and morphometric variation in *R. pretiosa* and suggested that at least two species were represented, referred to as species A (southwestern Washington and Oregon Cascades) and species B (remainder of range). However, morphometrically the two species were ''almost indistinguishable'' and the authors could not fully delineate the dividing line between the ranges of species A and species B. Based on biochemical and morphological data, Green et al. (1997) concluded that there were two groups at the species level—Oregon spotted frog (*Rana pretiosa*) and Columbia spotted frog (*Rana luteiventris*). They determined that all spotted frog populations occurring within Utah should be taxonomically described as *Rana luteiventris*. On September 19, 1997, the Service updated the common and scientific names of the Utah populations to the Columbia spotted frog, *Rana luteiventris*.

Further analyses of taxonomic relationships among range-wide spotted frog populations were performed by Bos and Sites (2001). This study revealed four genetically distinct lineages. Two of these lineages are represented in Utah—(1) the Deep Creek lineage (Deep Creek-Ibapah population in the West Desert DPS), and (2) the Bonneville lineage (all other populations in Utah, including the Wasatch Front and the remainder of the West Desert DPSs). The Wasatch Front DPS appears to have originated from the West Desert populations in relatively recent evolutionary time, during the recession of Lake Bonneville (Bos and Sites 2001, Toline and Seitz 1999). Therefore, genetic differences between these populations have not yet been established. However, separation of the West Desert and Wasatch Front DPSs is supported by ecological and demographic distinctiveness due to geographic isolation and habitat differences, including disparate biological, chemical, and thermal characteristics of occupied springs and wetlands (Hovingh 1993, U.S. Fish and Wildlife Service 1993). In addition, due to the dependence of spotted frogs on aquatic habitats (Bos and Sites 2001) and population isolation (Toline and Seitz 1999), there is likely no gene flow existing between the Wasatch Front and West Desert DPSs.

The disjunct populations in Utah represent the southern extent of the species range (Stebbins 1985). Post-glacial climatic shifts allowed spotted frog populations to naturally distribute across drainage areas of the Bonneville Basin of Utah. The Bonneville Basin encompasses the area that was covered by ancient Lake Bonneville and which,

today, lies within the Great Basin province. The Great Basin province is distinguished geologically by parallel north-south mountain ranges separated by broad, alluvial desert basins (Christiansen 1951) and valleys. The steep, gravelly slopes of these ranges are prominently marked by benches and other shore features of Lake Bonneville. Springs commonly occur at the base of the mountains (Bick 1966) and in the valley floors. Several aquatic species have maintained an existence as relict populations in these springs, including the Columbia spotted frog, least chub, and several species of mollusks. However, these species are rare and in some areas the populations are declining. Rapid deterioration of aquatic environments, primarily from agricultural practices, has caused other unique Bonneville Basin species, such as *Rhinichthys osculus relictus* (Hubbs and Miller), a subspecies of dace, to become extinct (Hubbs et al. 1974).

The Wasatch Front population occurs in isolated springs or riparian wetlands in Juab, Sanpete, Summit, Utah, Tooele, and Wasatch Counties. Columbia spotted frogs have been extirpated from the Salt Lake Valley and tributaries to the Jordan River and Great Salt Lake due to habitat loss from urban development. Currently, there are seven localized populations of spotted frog that comprise the Wasatch Front population or DPS. The largest known concentration is currently in the Heber Valley; the remaining six locations are Jordanelle/Francis, Springville Hatchery, Holladay Springs, Mona Springs Complex/Burraston Ponds, Fairview, and Vernon. For purposes of this finding, each distinct area within the Wasatch Front DPS that supports reproducing and self-sustaining frogs is referred to as a population.

Spotted frogs are aquatic specialists and more dependent on permanent aquatic habitats than other ranid species (Dumas 1966, Perkins and Lentsch 1998a). The majority of sightings and captures of this species have occurred while the frogs were submersed in water. Range-wide, spotted frogs use a variety of habitat types including cold water ponds, streams, lakes, and springs adjacent to mixed coniferous and subalpine forest, grassland, and brush land (Morris and Tanner 1969, Stebbins 1985). On the Wasatch Front, they are usually found in emergent wetlands associated with riparian or isolated spring-fed habitat with cool and organic substrates (Dumas 1966, Morris and Tanner 1969, Cuellar 1994). Habitat usually consists of a small spring, pond, or slough with a variety of herbaceous emergent, floating, and submergent vegetation. Spring vegetation most commonly associated with the spotted frog on the Wasatch Front includes: bullrush (*Scirpus* sp.), sedges (*Carex* spp.), cattails (*Typha* sp.), duckweed (*lemnaceae*), rushes (*Juncus* spp.), watercress (*Nasturtium officinale*), grasses (*Graminae*), and algae (Ross et al. 1994). Morris and Tanner (1969) suggest that deep silt or muck bottoms are required for hibernation and torpor.

Spotted frogs emerge from hibernation in the spring and tend to use different habitats depending on their needs. For example, in Yellowstone National Park sexually immature individuals tended to inhabit aquatic habitats away from breeding adults (Turner 1958). Breeding adults may use areas in the absence of other age-classes, and move to sites near younger frogs as the water begins receding from the breeding area (Turner 1958). Turner (1960) suggested that spotted frogs have small home ranges. In Yellowstone National Park frogs were recaptured at or near the same location used for breeding. This hypothesis is supported by studies of spotted frogs in the Heber Valley where most individuals were recaptured in the site of their initial capture (Ammon and Wilson 2001).

Recent studies have evaluated spotted frog locations and movements outside of the breeding season. Ongoing research in the Heber Valley of Utah indicates that spotted frogs travel short distances between breeding and post-breeding habitats, and many breeding sites serve as year-round habitat (Ammon and Wilson 2001). Bull and Hayes (2001) noted post-breeding dispersal distances of 15 to 560 meters (49 to 1,837 feet) in spotted frogs in northeastern Oregon. Dispersal patterns were related to pond size, water temperatures, and proximity to other sources of permanent water. Dispersal corridors are typically limited to aquatic or semi-aquatic habitats such as streams, intermittent drainages, and seeps (Ross and Peterson 1998). Intensive mark-recapture and radiotelemetry studies are needed to determine actual movement distances and patterns in this and other Utah populations.

Wasatch Front populations begin breeding in early-March with the spring thaw. However, populations at higher elevations may delay breeding until mid-March, and continue through late-April (UDWR data on file). Elevation differences in spotted frog breeding seasons have been similarly reported in British Columbia (Licht 1975) and Yellowstone National Park (Turner 1958), and are attributed to temperature differences. Spotted frogs are known to use temporary bodies of water for breeding in more mesic parts of their range (Turner 1960, Licht 1971), but in Utah breeding sites are predominantly associated with a spring or some other permanent water source (Morris and Tanner 1969, Hovingh 1993, Ross et al. 1993, Ross et al. 1994).

Egg deposition is stimulated by a single pair of frogs followed by other spotted frogs depositing eggs in the same area. It has been reported that they will deposit eggs in the same area annually (Morris and Tanner 1969, Nussbaum et al. 1983). Individual females may oviposit more than one clutch of eggs annually (Morris and Tanner 1969); however, this has not been confirmed in Utah populations. Sex ratios have not been quantified in Utah. For estimates of effective population size (N_e), UDWR used estimates of 1:1 sex ratios as derived from egg mass monitoring information during 1991–1993 surveys (Ross et al. 1993, 1994).

Egg masses tend to be deposited in open, shallow (<20 centimeters/7.9 inches) areas within 2 meters (6.6 feet) of the shoreline with water temperatures ranging between 11°C and 20°C (51°F and 68°F) (Ross et al. 1993, 1994). Egg masses are weakly adhesive and form an irregular mass or globular cluster approximately 7.5 to 20 centimeters (3 to 8 inches) in diameter. They may become weakly attached to vegetation (*Chara* spp.) for a short period of time. Eventually the mass floats to the surface, exposing the top layer of eggs. Wind and water currents often move masses around and they may begin to break up. Eventually the egg masses may become separated and covered with debris. Number of eggs per egg mass are quite variable, ranging from 147 to 1,160 eggs (Toone 1991). Individual eggs are typically larger than those of other ranids. Hatching rates vary directly with water temperature (Toone 1991).

Studies in Montana, Oregon, and British Columbia have documented that insects are the primary prey for the spotted frog (Miller 1978, Whitaker *et al.* 1982, Licht 1986). These studies were performed in portions of the species range outside of Utah where spotted frogs inhabit different habitat types and may exhibit different life history characteristics. However, absent site-specific information, we can assume that the feeding habits of spotted frogs in Utah are similar to those documented in other areas.

Summary of Factors Affecting the Species

Section 4 of the Act and implementing regulations (50 CFR part 424) set forth the procedures for adding

species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. An endangered species is one that is in danger of extinction throughout all or a significant portion of its range. A threatened species is one which is likely to become and endangered species within the foreseeable future throughout all or a significant portion of its range. The five factors used in determining whether a species warrants listing as either threatened or endangered and their application to the Wasatch Front Columbia spotted frog (*Rana luteiventris*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Urban growth with its associated water development and consequent losses of wetland and spring habitats were the primary causes for historical population losses and habitat fragmentation for the spotted frog on the Wasatch Front. Continued urbanization has been identified as a potential cause of concern for the spotted frog based on growth projections. The Wasatch Front human population is projected to increase to almost 3 million people by 2020 and 5 million by 2050 (Lee 2001). Counties with extant populations of spotted frogs are experiencing high human population growth rates (Table 1).

Approximately 14,400 hectares (35,500 acres) of wetland habitats are at direct risk from urban expansion by 2050 (Lee 2001, Lee and Melcher 2001). Development is projected to occur near most extant spotted frog populations by 2050. Urban development is not projected to occur in the vicinity of the Jordanelle/Francis population; however, recreational and rural residential development is increasing in the area and will likely continue. However, in and of themselves, general predictions about the degree of urbanization and other land uses in 2050 are too distant in time and speculative in nature to support a finding that the spotted frog is likely to be in danger of extinction in the foreseeable future. Though three of the populations once faced more certain and immediate threats to their habitat, as discussed below, those threats have been sufficiently addressed by conservation actions currently in place.

TABLE 1.—PROJECTED ANNUAL GROWTH RATES OF THE HUMAN POPULATION IN COUNTIES WITH EXTANT POPULATIONS OF SPOTTED FROG

County	Growth rate (%)
Utah	3.8
Wasatch	4.2
Summit	6.7
Juab	4.2
Sanpete	3.9

Note: Growth rates taken from Lee 2001 except for Summit County which was obtained from the web site, URL: *http://utahreach.usu.edu/summit/visitor/about.html.*

Recent conservation and management efforts (Table 2) have successfully focused on addressing foreseeable habitat loss threats to an extent that alleviates the threat of urbanization at the extant populations. Water development was identified as negatively impacting spotted frog habitat in the Heber Valley. However, this threat was removed with the purchase of 125 cubic feet per second of riverine base flows and 650 acre-feet of water for restored habitats under the Provo River Restoration Project. A potential threat to the Mona/Burraston population of spotted frogs is groundwater withdrawals in the Juab Valley. Thiros (1999) estimated, using 1992 water withdrawal rates and assuming no additional water contributions to the system, the water table could be lowered by 1.5 m (5 ft) and groundwater discharge rates reduced by 38 percent by 2022. However, model predictions indicate that the groundwater level available to support wetland vegetation will not significantly decrease in the Mona/Burraston area (Thiros 1999) and habitat for this population of spotted frogs is not likely to be affected. Groundwater levels are currently sufficient to sustain the Mona/Burraston spotted frog population. Habitat acquisitions or easements have been completed to a large degree at three of the extant populations (Mona/Burraston, Heber Valley, Springville Hatchery) to protect the populations in perpetuity. For example, 85 percent of the Provo River corridor in the Heber Valley (including most occupied spotted frog habitat) has been purchased through conservation efforts and is protected in perpetuity through legally binding agreements. Because of this protection, urbanization is no longer a direct threat to these populations. Although the threats to the habitat of other populations are distant and speculative at this time, as discussed below in ''Recommendations for the Future,'' similar protection efforts are planned for those populations.

Due in large part to habitat protection and conservation activities put in place during the past 5 years, the long-term viability of the Columbia spotted frog population on the Wasatch Front is stable to increasing. Recent survey efforts have discovered new breeding sites over larger areas, and documented larger population sizes than were previously known. The extant populations are more extensive, more connected and, therefore, more viable than previously thought.

Although habitat acquisitions that are completed are sufficient to address the current threats to the Wasatch Front population of spotted frog, efforts continue for acquiring additional habitats. Habitat acquisitions, to date, were targeted in those populations where threats were the most imminent. Potential threats are minimal at the remaining unprotected populations and do not currently compromise the long-term persistence of the spotted frog.

Given the habitat protection already in place, habitat loss is not likely to put the frog in danger of extinction in the foreseeable future. This is so even if none of the additional planned habitat protection is completed. To the extent that the additional protection is completed, it should further improve the status of spotted frog.

TABLE 2.—HABITAT PROTECTION AT EXTANT SPOTTED FROG POPULATIONS

Subunit or population	Habitat quantity	Acquisition or easement	Habitat type	Purchase status
Springville Hatchery	22.3 ha (55 ac)	Acquisition (State fish hatchery).	Occupied spring complex	Completed
Mona/Burraston	34.6 ha (85.5 ac)	Acquisition	Occupied spring complex	Completed
Mona/Burraston	7.9 ha (19.5 ac)	Acquisition or Easement	Occupied spring complex	Ongoing
Heber Valley	251 ha (620 ac)	Acquisition	Occupied riparian wetlands	Completed
Heber Valley	198 ha (490 ac)	Acquisition	Occupied riparian wetlands	Ongoing

TABLE 2.—HABITAT PROTECTION AT EXTANT SPOTTED FROG POPULATIONS—Continued

Subunit or population	Habitat quantity	Acquisition or easement	Habitat type	Purchase status
Heber Valley	650 acre-feet (plus 125 cfs base flows).	Acquisition	Stream flows to occupied riparian wetlands.	Completed
Jordanelle/Francis	9.7 km (6 mi), 6.5 ha (16 ac)	Easement	Occupied riparian wetlands	Ongoing
Fairview	162 ha (400 ac)	Easement	Occupied spring complex	Ongoing
Utah Lake	5,544 ha (13,700 ac) (includes previously acquired lands).	Acquisition	Unoccupied spring complexes	Completed
Weber River	3.2 km (2 mi)	Acquisition	Unoccupied riparian wetlands	Completed

*A full list of all actions since 1998 (*e.g.,* habitat enhancements, surveys, conservation easements) is in the appendix of this Status Review.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The collection of spotted frogs is currently prohibited (State of Utah Rule R657–3). However, past collections of this species may have contributed to the extirpation of some populations on the Wasatch Front. In particular, spotted frogs were collected from the Provo, Springdell, and Vivian Park areas for universities (U.S. Fish and Wildlife Service 1993).

Past and ongoing studies on the life history and habitat requirements of spotted frog in Heber Valley include the use of radio-tags, PIT-tags, and general handling of individual frogs. However, there have been no documented injuries or mortalities due to research related activities (*e.g.,* handling stress). Although these actions may increase the stress, disease risk, and mortality in this population, these studies are not a significant threat with the operating protocols and procedures to limit potential impacts in place.

C. Disease or Predation

Predation by introduced species is a potential threat to the Wasatch Front spotted frog. Most spotted frog habitats in Utah were not historically inhabited by predatory fish species (Sigler and Miller 1963). Today, a variety of introduced fishes, including largemouth bass, rainbow trout, brown trout, brook trout, common carp, mosquitofish, and rainwater killifish have become established in spotted frog habitats on the Wasatch Front. The potential threat appears highest from mosquitofish due to its affinity for the same systems as the spotted frog.

The mosquitofish (*Gambusia affinis*) is a small fish native to the eastern and southeastern United States. This species has been stocked throughout the world as a means of biological control for mosquitos (Sigler and Sigler 1996). Mosquito abatement districts have extensively stocked mosquitofish throughout various aquatic habitats in Utah including wetlands that have current or historic populations of spotted frog. Mosquitofish may be illegally transferred to new habitats by the general public or inadvertently transferred during relocation and reintroduction efforts for other aquatic species. Once introduced, mosquitofish can migrate to adjacent habitats.

Mosquitofish pose a potential threat to spotted frogs because of their known aggressive predation on eggs and young of fishes and amphibians (Grubb 1972, Sigler and Sigler 1987). Mosquitofish are suspected to prey preferentially on amphibian larvae in the presence of other potential prey items (Goodsell and Kats 1999). Spotted frogs may be particularly susceptible to predation by mosquitofish because the frogs emerge from the egg at a very small size of 8–10 millimeters (Morris and Tanner 1969). Studies of the California red-legged frog (*Rana aurora draytonii*) showed that tadpoles of all sizes may be susceptible to mosquitofish predation; they found that mosquitofish were effective predators on tadpoles and could injure or kill tadpoles larger than themselves (Courtenay and Meffe 1989). Spotted frog larvae are unable to swim for a few days after hatching, thus inhibiting their ability to actively avoid predation (Morris and Tanner 1969). Mosquitofish have been observed preying on recently emerged spotted frog tadpoles in populations on the Wasatch Front (Ross *et al.* 1993; Chris Keleher, CUWCD, pers. comm.).

Raccoons expanded their range into Utah over the past 25 years (Wilson and Balcomb 2001). Raccoon predation has been documented in the Heber Valley (K. Wilson, UDWR, pers. comm.). Although they are amphibian predators, the level of threat to the Wasatch Front spotted frog has not been determined. Bullfrogs, another nonnative predator, also are expanding their range into the Wasatch Front, but have not been documented in any spotted frog populations.

To date, no spotted frog extirpations have been attributed to the presence of nonnative species. Population-level effects (*i.e.*, population declines due to predation) by mosquitofish, and other predators, have not been observed on the Wasatch Front (K. Wilson pers. comm.). Available information suggests that spotted frogs are persisting with the presence of nonnative species. Based on numbers of breeding sites and egg masses, extant spotted frog populations are stable to increasing.

Habitat protection and research efforts are continuing to explore control methodologies in the event that nonnative species could ultimately affect spotted frog populations. For example, newly created and restored habitats at Heber Valley and Jordanelle/Francis are being designed to prevent nonnative species invasions. Ongoing conservation actions at all occupied habitats include assessing the impacts of nonnative species on the spotted frog and active removal in some cases. For example, a mechanical removal effort targeting nonnative fish species (primarily mosquitofish) has been underway since 1999. Long-term reduction of mosquitofish was not achieved; however, the documented temporary reduction has important implications toward substantially reducing mosquitofish numbers during critical life-stages of spotted frog (recently emerged tadpoles) and allowing better recruitment of spotted frog to adult life-stages (UDWR, unpubl.data). Given the known level of impact and the above-described conservation actions and protocols, predation by nonnative species does not threaten the persistence of Wasatch Front spotted frog populations.

Disease

Chytrid fungus was recently discovered in the Heber Valley population of the spotted frog (Green and Converse 2002, Green and Sohn 2002). Chytrid fungus has been implicated in precipitous declines of amphibian species worldwide (Berger *et al.* 1998, Longcore *et al.* 1999, Fellers *et al.* 2001, NWHC 2001). However, its role in the larger picture of frog population

dynamics, and more importantly, its implications for the spotted frog remains undefined. In fact, questions remain regarding the actual infection rate of chytrid in wild populations (Sredl 2000). Some researchers now speculate that the distribution and infection rate of chytrid may reflect more the extent to which biologists have tested for it as much as it reflects the actual distribution of infection (Fellers *et al.* 2001). Chytrid fungus may naturally occur in many amphibian populations that are only affected when other stressors or environmental factors interact synergistically to increase the virulence of the disease or compromise amphibian immune systems (Carey *et al.* 1999, Lips 1999). Some frog populations are known to have coexisted with chytrid fungus for decades (USFWS 2002).

Some researchers speculate that the spotted frog may exhibit a resistance (David Green pers. comm. 2002) or adapt (Green and Converse 2002, Green and Sohn 2002) to chytrid infection. Evidence suggests that amphibians infected with chytrid frequently die of dehydration because alteration of the skin inhibits their ability to absorb water. This is especially true in toads which, as opposed to frogs, have a limited area of skin over which to uptake water (*i.e.*, the pelvic patch); chytrid die-offs have been seen much less frequently in more aquatic amphibians, such as salamanders. Researchers hypothesize that frogs avoid death by dehydration from chytrid infection because they more freely exchange water though skin over a large portion of their body. In this sense, spotted frogs, because they are highly aquatic in nature, may exhibit a similar ''resistance'' to chytrid infection (David Green pers. comm. 2002). The infected Heber Valley frogs exhibited a limited infection with chytrid present only on the toes; these individuals appeared to control and adapt to their chytrid infections (Green and Converse 2002, Green and Sohn 2002). The chytrid researchers believe that low-stress conditions in the laboratory may have allowed these spotted frogs to persist long after infection was detected.

The Heber Valley population is the largest and most protected spotted frog population on the Wasatch Front. Habitat protection and conservation efforts have minimized or removed potential threats such as urbanization, predation, and water depletion as stressors from this population. Based on available information, the Heber Valley frogs are less likely to incur large-scale die-offs and are more likely to coexist with chytrid fungus in this low-stress environment. To prevent the potential for further spread of chytrid and other potential disease risks for spotted frogs, the UDWR has implemented strict disease protocols for managers and researchers working with spotted frog and other aquatic species in Utah. Implementation of these procedures is expected to greatly decrease the potential for chytrid to spread to other spotted frog populations. However, all Wasatch Front spotted frog populations will be closely monitored to identify any potential effects of chytrid.

Our current understanding and the relatively low level of known infection of chytrid fungus provides a measure of assurance that the current infection will not put the spotted frog in danger of extinction. To ensure the accuracy of this analysis, efforts will be made to continue to document and control the spread of chytrid fungus.

D. The Inadequacy of Existing Regulatory Mechanisms

Regulatory mechanisms did not halt the historical decline of the spotted frog along the Wasatch Front. However, historically, this was largely due to a lack of knowledge regarding the declining status of the spotted frog. Beginning in the mid-1990s, conservation of the spotted frog became a focus of many State and Federal agency efforts, resulting with implementation of the interagency Conservation Agreement and long-term protection for extant spotted frog populations. Importantly, the extant populations are now largely protected from imminent threats and there are ongoing conservation actions aimed at providing long-term protection for unoccupied habitats.

Existing regulatory mechanisms that also may provide protection for spotted frogs and their habitats include—(1) State laws, (2) National Environmental Policy Act, and (3) section 404 of the Clean Water Act. These laws provide additional protection and awareness above and beyond completed and ongoing conservation efforts.

State Regulations

The spotted frog is currently designated as a sensitive species in the State of Utah and is managed under a Conservation Agreement. State of Utah Rule 657–3 regulates the collection, importation, and possession of spotted frogs. The State of Utah Fish Stocking and Transfer Procedures (Policy # W2ADM–1) protects the spotted frog and other sensitive species in Utah by preventing the stocking of nonnative and other potentially harmful species in spotted frog habitats, and outlining protocols to decrease potential transmission of harmful pathogens to spotted frog populations.

National Environmental Policy Act

The National Environmental Policy Act (NEPA) requires Federal agencies to describe a proposed action, consider alternatives, identify, and disclose potential environmental impacts of each alternative, and involve the public in the decision-making process. Federal agencies are not required to select the alternative having the least significant environmental impacts, but environmental impacts, including those to wetlands and wildlife, are included as part of the public review process and NEPA analysis.

The NEPA can be an effective mechanism in the conservation of the spotted frog where a Federal nexus exists, and agencies are actively involved in spotted frog conservation; *i.e.*, the Conservation Agreement provides a mechanism for coordination and awareness in this regard. Land use and activities on private lands which includes more than half of the spotted frog populations are not required to comply with NEPA. Many large-scale land activities and water development projects occurred before there was a local awareness about the historically declining status of the spotted frog. However, most Federal agencies with interest or planned actions that might affect spotted frog are currently signatories to the Conservation Agreement. Although their involvement in and of itself does not legally bind the signatories to specific actions under NEPA, since the inception of the agreement these agencies have included spotted frog impacts and conservation as part of NEPA compliance.

Clean Water Act Section 404

Section 404 of the Clean Water Act, administered by the Environmental Protection Agency and the Army Corps of Engineers, is the primary Federal law that potentially provides protection for the spotted frog by regulating fill to wetlands and other aquatic habitats determined to be ''jurisdictional,'' in part through proximity to surface water connections. The types of wetland impacts addressed by section 404 include:

(1) Actions that impact jurisdictional wetlands defined as ''waters of the United States,'' 33 U.S.C. § 1363(7);

(2) Discharge of dredged or fill material into waters of the United States; and

(3) Limited activities in upland habitats that may have indirect impacts

to adjacent wetlands where fill is permitted.

Recent court decisions (*National Mining Association* v. *U.S. Army Corps of Engineers* 145 F.3d-1399 (D.C. Cir. 1998) (overturning the Tulloch Rule); *Solid Waste Agency of Northern Cook County* v. *United States Army Corps of Engineers* 531 U.S. 159 (2001) (narrowing the definition of waters of the United States)) have recently reduced the authority of section 404 to protect wetland habitats.

Because of their hydrologic connection to navigable waterways (*e.g.*, Provo River, San Pitch River), the Corps still regulates the remaining unprotected remnant spotted frog wetland areas and large areas of unoccupied habitats. The Service maintains an important advisory role to the Corps in the section 404 permitting process. Because of questions concerning the success of spotted frog translocations and spotted frog habitat creation, recent discussions with the Corps have focused on using habitat protection (acquisitions, easements) and restoration techniques for mitigation of spotted frog habitats where necessary.

Resource agencies have been successful at incorporating actions and project conditions that protect and enhance spotted frog habitat. Ongoing efforts include the protection and restoration of spotted frog habitat along the upper Provo River associated with the proposed Victory Ranch development and planned acquisitions of other properties along the Upper Provo River. In addition, ongoing negotiations have been successful in relocating a proposed wastewater treatment plant in the San Pitch Valley near Fairview to a location outside of spotted frog habitat. Furthermore, the applicant is proposing to donate approximately 1.6 hectares (4 acres) of mixed uplands and wetlands for a conservation easement for spotted frogs as a part of the project.

Some areas of unoccupied habitats may be considered nonjurisdictional, *i.e.*, not subject to regulations under section 404. However, a large portion of remaining unoccupied habitats are not imminently threatened, and some unoccupied suitable habitats, like those at Utah Lake and the Weber River, are protected in perpetuity. Unoccupied habitats are important for future reintroduction and range expansion efforts now that the extant populations are stable. Although there are no documented records of spotted frogs in these areas, Utah Lake and the Weber River fall within its historic range and provide presumably suitable habitat.

In summary, section 404 certainly does not provide complete protection for the spotted frog and its habitats. Historically, regulatory inadequacies likely resulted in the loss of large amounts of occupied spotted frog habitats. Agencies have more recently been successful in working with local landowners and the 404 permitting process to protect and restore spotted frog populations and habitat. The cooperative environment that has resulted from the Conservation Agreement has facilitated efforts to prioritize the spotted frog through the section 404 permitting process. Because of this emphasis, actions that could affect occupied spotted frog habitats are more thoroughly evaluated and efforts are made to avoid or minimize potential impacts. Therefore, potential regulatory inadequacies do not threaten the long-term persistence of the Wasatch Front spotted frog.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Drought may play a role in reducing reproduction of spotted frogs on the Wasatch Front. Decreased rain and snowfall can dry wetlands, dessicate spotted frog egg masses and larvae, and reduce survival rates of subadults and adults (U.S. Fish and Wildlife Service 2000). The combination of increased water demands and natural drought cycles may further reduce the extent and quality of spotted frog habitat and the size of the remaining populations on the Wasatch Front.

Contaminants have not been specifically implicated in the decline of any spotted frog population on the Wasatch Front. However, given the prevalence of agriculture and urban development, the species is likely exposed to a variety of toxins from urban and agricultural sources. While the sensitivity of this species is largely unknown, studies of similar amphibian species show sublethal and lethal effects at the population level.

These factors are not currently known to be significant threats to the long-term persistence of the Wasatch Front spotted frog.

Conclusions and Findings

Current Status

Currently, there are seven populations of spotted frog included in the Wasatch Front DPS, including the newly discovered Vernon population in the Rush Valley near the town of Vernon. Survey efforts since 1999 have greatly expanded the known range of most populations. Most notably, approximately 19 kilometers (12 miles) of occupied spotted frog habitat were discovered in the upper Provo River corridor. All extant populations, with the exception of the very small, isolated Springville Hatchery/T-Bone Bottom population, have either increased (documented colonization of unoccupied newly created or restored sites) or have been found to be of a larger population size (additional occupied sites or greater density of sites found within known population boundaries) than previously thought (Table 3).

TABLE 3.—NUMBERS OF DOCUMENTED BREEDING SITES IN SPOTTED FROG POPULATIONS ON THE WASATCH FRONT

Population	Year								
	1994	1995	1996	1997	1998	1999	2000	2001	2002
Jordanelle/Francis	14	14	14	14	14	23	23	33	48
Heber Valley	22	23	33	52	56	57	74	74	91
Springville Hatchery/T-Bone Bottom	3	3	3	3	3	3	3	3	3
Burraston Ponds/Mona Springs Complex	4	4	4	4	4	7	7	7	7
Holladay Springs	2	2	2	2	2	4	4	4	4
Fairview	11	11	11	11	11	13	26	26	26
Vernon	.....	.....	.....	.....	.....	.....	.....	.....	1

The Springville/T-Bone Bottom remains the most vulnerable to extirpation. All other populations (Heber Valley, Jordanelle/Francis, Mona/Burraston, Holladay, and Fairview) have exhibited stable or increasing egg-mass trends based on a review of almost 10 years of egg-mass number data. Populations, however, are

cyclic and exhibit continuous, natural high/low fluctuations. Population declines are not unusual; amphibian populations are naturally dynamic, and exhibit sporadic breeding in response to environmental stressors (Duellmann and Trueb 1986).

Population fluctuations (as evidenced by egg mass numbers) have occurred, but have been attributed to natural population dynamics resulting largely from climatic conditions, and not the result of changed landscape conditions. In addition, the Vernon population was discovered in 2002. This discovery and that of an additional 19 kilometers (12 miles) of occupied habitat along the Provo River (Jordanelle/Francis population) implies that additional populations and occupied habitat could yet be discovered.

Based on this recent data, extant populations of the Wasatch Front spotted frog DPS, after decades of decline, have been exhibiting a stable to increasing trend in the most recent time period examined (from 1998 to present; Table 4, Table 5).

TABLE 4.—NUMBERS OF EGG MASSES AT DOCUMENTED BREEDING SITES IN SPOTTED FROG POPULATIONS ON THE WASATCH FRONT

Population	Year								
	1994	1995	1996	1997	1998	1999	2000	2001	2002
Jordanelle/Francis	92	79	29	21	21	20 (63)	59 (99)	31 (165)	44 (260)
Heber Valley	120	156 (167)	323 (473)	219 (491)	176 (372)	206 (438)	151 (431)	123 (418)	206 (550)
Springville Hatchery/T-Bone Bottom	7	6	0	65	87	44	50	25	9
Burraston Ponds/Mona Springs Complex	5	66	63	148	78	61(78)	111P (120)	69 (73)	41 (41)
Holladay Springs	24	33	29	64	122	144 (192)	135 (160)	52 (68)	27 (27)
Fairview	35	34	24	24	22	17 (25)	59 (130)	20 (163)	*8 (86)
Vernon	.....	.....	.....	.....	.....	.....	.....	.....	4

(#) = egg masses at original breeding site + egg masses at recently discovered breeding sites.
* Three of 11 sites were not surveyed because access was mistakenly denied to the property. This situation has been corrected and full access to these sites has been restored.

TABLE 5.—SUMMARY OF SPOTTED FROG POPULATION TRENDS

Time period	Number of populations	Population stability/size
Pre-settlement	>18 [a]	No data.
Early to Mid 1900s	18 [a]	Presumed decreasing.
Up to 1993	9	Documented decreased.
1995 to 1998	6	Stable.
1998 to 2002	7 [b]	Stable to increasing.

[a] Includes documented historic and current populations. Current populations are assumed to have been present historically.
[b] Includes recently discovered Vernon population.

The recent change in species status and trends is due in part to our increased knowledge of the species distribution and in part due to the success of already-completed conservation efforts that have minimized or reduced many of the imminent threats to extant populations. Although not all actions necessary to alleviate concerns have been completed, completed conservation actions have addressed and removed or sufficiently reduced threats and the risk of extinction.

The development and implementation of the Conservation Agreement represented an important shift in awareness and effort for conservation of the Wasatch Front spotted frog. Since the initiation of the Conservation Agreement in 1997–1998 and the subsequent conservation actions, monitoring and survey data has shown that populations are larger than previously thought.

Conservation actions have been successful at addressing localized threats to the species at the extant population areas. For example, habitat protection and removal of grazing at Mona Springs has resulted in significant improvements to spotted frog habitat. Habitat acquisitions specific for existing spotted frog populations have occurred (*e.g.*, Heber Valley and Mona/Burraston) and significant acreages of unoccupied historic habitat have been purchased and protected (*e.g.*, Utah Lake Wetland Preserve) as mitigation for prior impacts to aquatic resources associated with the Central Utah Project. Funds also have been allocated for research into the life history, habitat requirements, and genetics of the spotted frog.

Specific conservation actions and large-scale land acquisitions have occurred that may provide reintroduction areas for spotted frog range expansion efforts. For example, acquisition of the Utah Lake Wetland Preserve and parcels in the Weber River drainage to provide historical, but currently unoccupied habitats.

Population Viability

Of the extant populations, there is a range of ecological size and function that provides a level of diversity. Some populations occur along riparian wetland corridors while others occupy complex spring systems in the valley floor. Although populations are undoubtedly smaller than they were historically, most exhibit stable or increasing trends. The Heber Valley, Jordanelle/Francis, Fairview, and

possibly the Mona/Burraston population are large enough to provide some small scale metapopulation function (genetic and demographic buffer) within individual population boundaries. Although not discrete populations, these locations occur over a geographic area of sufficient size and habitat diversity to yield localized genetic interchange. These sub-population dynamics provide local genetic and demographic buffer for the overall population. Other populations like the Springville and Holladay populations, provide small, isolated genetic and demographic refuge and a locally unique ecological function to the Wasatch Front DPS.

There is no specific answer in conservation literature as to the number of populations necessary to allow long-term persistence of a species in a natural evolutionary trajectory. For amphibians, most experts agree metapopulation dynamics provide a critical role in population stability. In the absence of large, connected metapopulations, multiple spotted frog populations of different sizes that represent a range of natural ecological function can provide a reasonable level of assurance for long-term persistence of the species. Newly created or isolated small populations can provide demographic and genetic refuge for other populations. Larger, better connected populations can prevent loss of genetic diversity and prevent detrimental genetic affects that can occur in small populations.

The number of extant populations is one factor affecting the viability of a species. The greater number of populations that occur, the less likely the species will go extinct. This also can be misleading. One large metapopulation fragmented into two smaller populations by human impacts does not translate into a greater chance of persistence. Other factors, such as population size (relative density, abundance, or effective size) and stability (protection of habitat, stable or increasing trend in monitoring data) must be considered in concert with number of populations. When there is a positive or stable trend in population size and numbers and a reduction in threats due to completed and ongoing conservation actions, the species is likely to persist into the future.

Summary

The overall level of threats to the long-term persistence of the Wasatch Front spotted frog has decreased in recent years, particularly since 1998. Although most of the human activities that contributed to these threats still occur to some extent throughout the Wasatch Front, there is no longer the same level of impacts on the spotted frog that resulted in past wide-spread habitat destruction and the loss of spotted frog populations. Much of the occupied habitat for the spotted frog is under State or Federal ownership and ongoing management of these lands emphasizes the long-term persistence of the spotted frog. This is not to say that threats have been eliminated. Localized areas continue to be affected by specific problem activities.

However, mechanisms are in place through Federal, State, and local conservation and land-use plans to identify these activities, correct the problems, and protect spotted frog populations. To date, these actions have been successful at reducing threats to extant populations, largely by acquiring important habitats and implementing management actions that improve habitat conditions. Success is evidenced by the stable to improving status of the spotted frog throughout the Wasatch Front in the most recent time period evaluated.

Based on this analysis of the effects of conservation actions already in place, the trajectory of the Wasatch Front spotted frog status continues to be towards more secure populations, reduced threats, and improved habitat conditions. Although some threats continue and may increase, most threats have been or are being addressed through completed or ongoing actions and at this time do not threaten the long-term persistence of the spotted frog. Our analysis of the five factors under section 4(a)(1), individually and collectively, indicates that the spotted frog is not in danger of extinction or likely to become in danger of extinction in the foreseeable future throughout all or a significant portion of the Wasatch Front. Therefore, the Service finds that the Wasatch Front spotted frog is ''not warranted'' for listing under the Act. If new information indicating that the level of threats have become more severe or the status of the spotted frog or its habitat degenerates in the future, the status of the spotted frog will be reevaluated.

Recommendations for the Future

Following historical habitat and population losses, the current populations are stable to improving and most are protected to a large degree from ongoing direct habitat loss, due to already completed conservation actions. Further habitat acquisitions and protections are in progress for the Jordanelle/Francis, Heber Valley, Mona/Burraston, and Fairview populations. Current ventures are focused on acquiring habitat easements along approximately 9.7 kilometers (6 miles) above Jordanelle Dam, including occupied and suitable spotted frog habitats. Easements are currently being pursued with 7 Fairview landowners to protect approximately 162 hectares (400 acres) of occupied spotted frog habitat and migration corridors from potential water and residential development. The remaining 15 percent of the Provo River corridor in the Heber Valley is projected to be purchased and protected by 2004. In the Mona/Burraston population, fee-title purchase or conservation easements are currently being negotiated for 7.9 hectares (19.5 acres) which would allow for protection of all spring and potential spotted frog habitat on this site.

Completion of habitat protection activities which have resulted in a reduction of threats to the extant populations allows conservation efforts to now focus on population expansion into historic, unoccupied habitats. Habitat protection and reintroduction of frogs into suitable, unoccupied habitats will further improve the long-term status of the species along the Wasatch Front. For example, recent habitat acquisitions that also will benefit the spotted frog include 5,544 hectares (13,700 acres) at Utah Lake and 3.2 kilometers (2 miles) along the upper Weber River.

Therefore, the focus of spotted frog conservation efforts can reasonably shift to acquisition of additional occupied and unoccupied, suitable habitats and range expansion efforts, including:

(1) Land protection mechanisms, such as conservation easements and fee-title acquisitions generally provide the most long-term benefits for sensitive species. Voluntary conservation actions on parcels of private land may provide site-specific benefits to the frog. Future conservation should continue to focus on land acquisition and easements that include buffer zones sufficient to minimize direct and indirect impacts from land use as well as protection and maintenance of dispersal or migration corridors. Furthermore, steps should be taken to protect water sources (*i.e.*, Juab Valley) where potential threats are identified.

(2) Although there is no specific number of populations necessary to prevent extinction, reintroduced populations provide ecological redundancy in ecological function and genetic and demographic stochasticity. There are several habitats already identified which may provide suitable reintroduction sites. Future conservation should include reestablishment of spotted frog populations, and associated research

and land management necessary to maintain new populations in: (1) Areas where populations previously occurred if suitable habitat remains and (2) other suitable habitat within the natural range of the species.

(3) Some Wasatch Front spotted frog populations are notably small in size and vulnerable to risks of detrimental genetic processes (inbreeding, loss of genetic diversity) and demographic uncertainty. Springville Hatchery/T-Bone Bottom population is particularly vulnerable based on its current size and decreasing trend. Actions should be taken to augment or through some other process, increase the size of this population. Furthermore, the current trend should be evaluated to determine if specific land or water use activities are exacerbating the decrease. If specific threats are identified, priority should be placed on reducing these threats such that the population would remain secure into the future.

References Cited

A complete list of all references cited is available upon request from the Utah Field Office (see **ADDRESSES** above).

Author

The primary authors of this document are Jessica Gourley and Laura Romin (see **ADDRESSES** above).

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 23, 2002.

Steve Williams,

Director.

[FR Doc. 02–22160 Filed 8–29–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 010501108–2202–02, I.D. 040502B]

Endangered and Threatened Species; Final Determination on a Petition to Designate Critical Habitat for the Bering Sea Stock of Bowhead Whales

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

ACTION: Notice of determination.

SUMMARY: NMFS received a petition on February 22, 2000, requesting that portions of the U.S. Beaufort and Chukchi Seas be designated as critical habitat for the Western Arctic stock (which is also referred to as the Bering-Chukchi-Beaufort stock, among other names) of bowhead whales, *Balaena mysticetus*, under the Endangered Species Act (ESA). Under the ESA, the designation of critical habitat for species listed prior to 1978 is discretionary. NMFS is not proposing designation of critical habitat for this population of bowhead whales for the following reasons: (1) the decline and reason for listing the species was overexploitation by commercial whaling, and habitat issues were not a factor in the decline; (2) there is no indication that habitat degradation is having any negative impact on the increasing population in the present; (3) the population is abundant and increasing; and (4) existing laws and practices adequately protect the species and its habitat.

ADDRESSES: Requests for copies of this determination should be addressed to the Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Bradley Smith, Alaska Regional Office, NMFS, Anchorage, Alaska, (907) 271–5006; Michael Payne, Alaska Regional Office, NMFS, Juneau, AK, (907) 586–7236, or Thomas Eagle, Office of Protected Resources, NMFS, Silver Spring, MD, (301) 713–2322, ext. 105.

SUPPLEMENTARY INFORMATION:

Background

Listing Under the ESA: Bowhead whales were listed as endangered under the Endangered Species Conservation Act, the predecessor to the ESA, on June 2, 1970 (35 FR 8495; codified at 50 CFR 17.11). The species was then listed as endangered under the ESA in 1973. The principal cause of the decline of bowhead whales, which prompted its listing, was commercial whaling. Factors related to habitat have not been identified as a factor in the decline of the species. Critical habitat has not been designated previously for bowhead whales.

Status and Distribution: Five stocks of bowhead whales occur in Arctic and subarctic waters of the northern hemisphere. The Western Arctic stock of bowhead whales is the largest of these stocks, and occurs in the Bering, Chukchi, and Beaufort Seas. This stock was reduced by commercial whaling in the late 19th and early 20th centuries from an estimated original population size of 10,400–23,000 whales to only several thousand whales by 1910. The best available population estimate for this stock is 8,200 animals and is based upon a survey in 1996. The annual rate of population increase is estimated to be 3.2 percent. A comprehensive survey of the Western Arctic stock of bowhead whales was conducted in the spring of 2001 near Barrow, AK. While the analyses from this survey are not yet completed, preliminary information indicates that their abundance has continued to increase.

Bowhead whales are seasonal residents in the Chukchi and Beaufort Seas. The summer habitat for this stock occurs primarily in Canadian waters off the McKenzie River Delta. They migrate from west to east in spring, and return in fall. Most of the stock is believed to winter in the central and western Bering Sea along the ice front and in irregular areas of open water within the ice called polynyas.

Mating is believed to take place in late winter and spring, perhaps continuing through the spring migration. Each year calving occurs as early as March and as late as August; however, most calving occurs from April through early June during the period of migration.

Bowhead whales feed almost exclusively on zooplankton. Bowhead whales feed in summer in the Canadian Beaufort Sea and the Amundsen Gulf area. Foraging also occurs during the fall migration throughout the Alaskan Beaufort Sea. Feeding locations may vary between years. The majority of whales harvested during fall at Barrow, AK, have food in their stomachs. In September 1998 bowhead whales were observed feeding along the Alaskan coastline near and east of Kaktovik. Most bowhead whales harvested at Kaktovik have food in their stomachs. Studies in the eastern Beaufort Sea indicate that whales also forage over the inner continental shelf. Local knowledge has also shown that the waters around the barrier islands along the Beaufort Sea coast are an important foraging area for bowhead whales. Several sources of man-induced activities impact, or may impact, bowhead whale populations. Bowhead whales are harvested by Alaskan Natives in the Beaufort, Bering, and Chukchi Seas. Annual subsistence take levels averaged 37 whales per year from 1990–2000. In addition to the subsistence harvest, other human activities may contribute to the total mortality. Commercial fishing occurs in the Bering Sea and elsewhere throughout the range of this stock. Interactions between bowhead whales and fishing gear is not thought to be common, however, bowhead whales with ropes caught in their baleen or

around their peduncle, and with scarring caused by rope entanglement, have been reported from the animals taken in the subsistence harvests. The North Slope Borough has also documented three confirmed ship strike injuries among 236 bowhead whales taken in the subsistence hunts.

Noise in the marine environment is also increasing with increased industrialization of the Alaskan Arctic, and may effect these whales to an unknown degree. However, there is insufficient evidence at this time to indicate any cumulative or long-term affect on bowhead whales as a result of anthropogenic noises in their Arctic environment. Further NMFS is unaware of any evidence that habitat alteration has had any impact on the recovery of this stock.

The Petition: On February 22, 2000, the Center for Biological Diversity and the Marine Biodiversity Protection Center petitioned NMFS to designate critical habitat for the Western Arctic stock of bowhead whales. The petition requested that the designation include waters of the Chukchi Sea east of 158 degrees W. Long. and the Beaufort Sea between Point Barrow, AK, and the Canadian border, from mean high tide to approximately 170km offshore.

Critical habitat is defined in the ESA (16 U.S.C. 1532(5)) as the specific areas on which are found the physical or biological features (1) essential to the conservation of the species and (2) which may require special management considerations or protection. The 1978 amendments to the ESA established the current criteria for designating critical habitat, which provide, ''Critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established...'' (16 U.S.C. 1532(5)(B)). Therefore, designating critical habitat for species listed prior to 1978 is a discretionary action for NMFS.

Under the Administrative Procedure Act, 5 U.S.C. 553(e) provides, ''Each agency shall give an interested person the right to petition for the issuance, amendment or repeal of a rule.'' NMFS regulations in 50 CFR 424.14(d) address petitions to designate critical habitat: ''Upon receiving a petition to designate critical habitat... the Secretary shall promptly conduct a review in accordance with the Administrative Procedure Act (5 U.S.C. 553) and applicable Departmental regulations and take appropriate action.'' NMFS found that the petition contained substantial scientific information indicating that the petitioned action may be warranted and published a notice requesting comments on May 22, 2001 (66 FR 28141).

Response to Comments

NMFS received comments from the following organizations during the 90 day comment period: British Petroleum Exploration-Alaska, the Alaska Eskimo Whaling Commission (AEWC), the Inupiat Community of the Arctic Slope, LGL Ltd. Environmental Research Associated, the Alaska Oil and Gas Association, Phillips Petroleum-Alaska, Incorporated, the Minerals Management Service (MMS), and the Center for Biological Diversity. NMFS also received comments on the petition from several individuals. Following is a summary of the comments received and NMFS' response.

Comment 1: Several commenters suggested that the petitioned action is not warranted for the following reasons: The U.S. Beaufort Sea is no more important to the bowhead whale than other areas throughout its range; the Bering/Chukchi stock of bowhead whales is large and increasing in number; loss of habitat is neither contributing to any decline in the bowhead whale population nor limiting their recovery; and existing regulations and management agreements provide adequate protection for this habitat.

Other comments emphasized the growing abundance of the stock, the lack of impact to the whales or their habitat from development, and the significant array of existing laws and regulations which already protect the bowhead whale and its habitat. They also said that any benefits to the bowhead by designation of critical habitat would be outweighed by economic costs.

Response: Few data exist describing the distribution and behavior of bowhead whales outside the Beaufort Sea. It is known that bowhead whales migrate each fall into Bering Sea waters of the U.S. and off the Kamchatka Peninsula. They are presumed to winter in the Bering Sea near the ice edge and within polynyas around St. Lawrence Island. The foraging habitat of bowhead whales appears to be highly dynamic, following changes in species composition of prey and oceanography. Feeding is known to be the principal activity of bowhead whales in the Canadian Beaufort Sea off the McKenzie River Delta, and bowheads continue to feed during their fall migration into the U.S. Beaufort, as well as during the spring migration. Inupiat Eskimos have regularly reported whale feeding behavior in the U.S. Beaufort Sea. The relative importance of foraging habitat within the U.S. Bering Sea to the bowhead whale is difficult to assess. Stable-isotope research has indicated that the Bering Sea provides a substantial portion of the annual food requirements for these animals. Feeding behavior has been observed also among bowhead whales seen off the Siberian coast in late fall.

Breeding locations and periods are not precisely known, but are most likely to occur within the Bering Sea in winter or during spring migrations into the Chukchi and Beaufort Seas. Calving is likely to occur in the months of April, May, and June. This period also coincides with the spring migration.

The loss or degradation of habitat does not appear to be limiting the population growth of bowhead whales at this time. The Beaufort Sea contains large tracts of valuable mineral resources, particularly oil and gas deposits and, as a result, it has been extensively explored for the presence of oil and gas during the past few decades. Both the State of Alaska and the U.S. Department of the Interior are conducting lease sales in the Beaufort Sea. The Northstar Project began production in 2000 and is the first offshore oil production facility in the Beaufort Sea. A second major offshore production facility, Liberty, will be developed in 2003. Oil and gas exploration activities (seismic surveys and drilling) also occur in the Beaufort Sea.

The National Outer Continental Shelf leasing program of the MMS will occur in only two areas during the 5–year planning period 2003–2007, the Gulf of Mexico and Alaska (including the U.S. Beaufort Sea). The occurrence of the bowhead whale and the intensive exploratory and developmental activities of the oil and gas industry that occur in the habitat of the whale has generated significant amounts of attention for many years at every governmental level. Noise in the marine environment is a major habitat issue with respect to offshore development and bowhead whales, and certain noise sources have been shown to cause behavioral changes in individual whales. Current trends in this industry have been to further minimize or eliminate the introduction of any pollutants into the Beaufort Sea. Protective measures such as spill contingency plans and prevention measures, wastewater treatment, shore-based disposal of garbage and drill cuttings, and re-injection of drilling muds and production waters have been implemented to protect the environment.

There has been an increase in the underwater noise levels in the Beaufort

Sea as a result of activities such as shipping, ice-breaking, dredging, construction, drilling, and geophysical exploration (seismic). Monitoring studies in the nearshore Beaufort Sea during 1996–1998 demonstrated that nearly all bowhead whales avoid an area within 20 km of an active seismic source and avoidance or deflection by bowhead whales may begin at distances up to 35 km from the noise source. Although NMFS is aware that increases in the levels of noise may potentially have an adverse impact on bowhead whales, NMFS is unaware of any evidence that noise has altered the habitat to the point that it has had any significant impact on the recovery of this population.

Comment 2: One of the commenters stated that an assessment of economic impacts should be incorporated into our response to the petition.

Response: The ESA requires that, when designating an area as critical habitat, the Secretary of Commerce shall consider the probable economic and other impacts of the designation upon proposed or ongoing activities and may exclude areas from the designation based on the analysis. Because NMFS is not proposing to designate critical habitat, NMFS is not required to conduct an analysis of the economic impacts.

Comment 3: One of the commenters stated that a National Environmental Policy Act (NEPA) document (e.g. an Environmental Assessment or an Environmental Impact Statement) is necessary to document and assess those impacts not otherwise accounted for in the ESA process of designating critical habitat.

Response: NMFS is not proposing to designate critical habitat at this time; therefore, NMFS will not be preparing a NEPA document.

Comment 4: Another commenter also stated that the designation of the Beaufort Sea as critical habitat for bowhead whales is not warranted because courts have found that NMFS is not required to designate critical habitat for species listed under the ESA prior to 1978, and that NMFS should avoid unnecessary or duplicative regulations. The commenter noted that this population of bowhead whales is increasing in numbers despite subsistence harvest removals, and there is no evidence that efforts to conserve the population has been affected by a loss or degradation of habitat.

Response: NMFS agrees with the commenter's statement that he number of bowhead whales is increasing. The current population abundance estimate for this population of bowhead whales is estimated at 8,200 individuals and it is increasing at a rate of 3.2 percent per year. There is no indication that degradation of habitat is having any negative impact on the current population. In addition, as provided in response to comment 1, the loss or degradation of habitat does not appear to be limiting the population growth of bowhead whales at this time. NMFS recognizes that the ESA gives the Service discretion in designating critical habitat for species listed prior to the 1978 amendments and has taken into consideration this factor, as well as the others mentioned by the commenter, in making its determination on this petition.

Comment 5: Several commenters supported the designation of critical habitat for the Western Arctic population of bowhead whales. They noted that bowhead whales may be present in the U.S. Beaufort Sea for up to 4 months during any given year, that calving occurs in these waters during the spring and open water seasons, and that the Beaufort Sea is known to whalers as an important bowhead whale feeding area during both spring and fall migrations. The commenters stated that these features of the area are essential to the conservation of the bowhead whale. They also stated that the Beaufort Sea is becoming increasingly developed, largely for oil and gas extraction and these actions have resulted in documented behavioral effects to bowhead whales. They anticipate future adverse effects due to the continued development and the possibility of oil spills. They further stated that the spring and fall migratory corridors, and waters landward, represent the minimum extent of critical habitat, and recommended that NMFS also consider a similar designation for the spring lead system of the Chukchi Sea. Finally, the commenters stated that NMFS must prepare a recovery plan for the bowhead whale.

Another commenter specifically mentioned the potential for impact from oil spills and nois e on these whales, and the potential adverse consequences to the Inupiat Eskimo culture. They requested that NMFS honor tribal sovereignty by respecting their request to prohibit oil and gas development in the Beaufort Sea.

Response: NMFS is aware that bowheads use portions of the Beaufort Sea for calving, migration, and feeding, recognizes that these areas are important for bowhead whales, and understands that these areas are being used for energy exploration and development. However, NMFS maintains that these areas are protected adequately by existing laws and regulations and do not need additional special management consideration or protection under the ESA.

NMFS reviewed the need for a recovery plan for the bowhead whale, and determined (Memorandum dated June 16, 1998) that a recovery plan was unnecessary due largely to the status of the stock and an agreement between NOAA and the AEWC to manage subsistence harvest of the population. This agreement and the IWC's Whaling Convention and Aboriginal Harvest Plan cover harvest management, research and enforcement.

NMFS recognizes its responsibilities to consult on a government to government basis with the affected tribal entities of the North Slope in this matter and the importance of local knowledge in our discussions with tribal entities. Much of the applied research associated with oil and gas activities is based on science developed through coordinated study planning, which supplements the scientific method with traditional knowledge and observations of the Inupiat Eskimos. Research plans and reports are often subject to peer review, and Native participation is normally sought when conducting this research.

Comment 6: One commenter challenged the Petitioner's statements as to the scope and adequacy of scientific research on the Western Arctic population of bowhead whales. The commenter stated that much is known about these whales, and that research has been directed to those activities with the greatest potential to impact the population. The commenter also stated that any assessment of this issue should consider that these bowhead whales encounter human interaction in other areas of their range; that members of the population spend most of their time outside of the U.S. Beaufort Sea, and that while feeding, sexual activity, and rearing occur in these waters, the U.S. Beaufort Sea is not the part of the bowhead's range in which these activities are most common.

Response: NMFS agrees that much is now known regarding this population of bowhead whales, particularly in the U.S. Beaufort Sea. NMFS considered the factors identified by the commenter in making its determination on this petition.

Comment 7: Another commenter stated that the Western Arctic population of bowhead whales has grown for many years, and may, in fact, now be considered recovered. They recommended that NMFS delay its determination on this petition until the final reports from the 2001 whale

census and the bowhead whale feeding study are completed. The commenter further stated that a recovered stock obviates any need to designate critical habitat necessary for their recovery and conservation. They note that Incidental Harassment Authorizations (IHAs) issued under the MMPA by NMFS have indicated that offshore oil and gas activities could result in behavioral changes to whales that would result in no more than a negligible impact to the whales. The commenter further stated that the IHA process has proven effective in protecting these whales from human-related activities in the petitioned area. Finally, the commenter stated that NMFS must comply with Executive Order 13211 entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' by preparing a statement of energy effects which describes any actions which may have any adverse effects on energy supply.

Response: NMFS agrees that the Western Arctic population of bowhead whales is increasing. The total visual count of 3,295 bowhead whales during the 2001 survey is encouraging, and provides some additional support that the stock may be recovering. Peer review of the results of the 2001 survey has not been completed; therefore, those results are still preliminary.

The bowhead whale receives protection under both the ESA and the MMPA. Both acts prohibit the unauthorized taking of a bowhead whale. The IHA process is an effective tool in protecting the bowhead whale and, particularly, in mitigating the effects of human-induced noise in the marine environment on the whales. Authorizations of small-take under the MMPA (usually in the form of an IHA) are routinely applied to any oil and gas activities in the Beaufort Sea which may adversely affect bowhead whales or their habitat. The required conditions and monitoring attached to these authorizations focus on anthropogenic noise and are designed to minimize behavioral disruption to bowhead whales.

Because NMFS is not proposing to designate critical habitat, compliance with Executive Order 13211 is not required.

Comment 8: This comment focused on a recent court decision (*Sierra Club* v. *U.S. Fish and Wildlife Service*, 245 F.3d 434 (5th Cir. 2001)) as further support for the need to designate critical habitat for bowhead whales. The court found that the definition of ''destruction or adverse modification'' under 50 CFR 402.02 related to consultation under ESA section 7 is invalid. Therefore, the court found that a decision not to designate critical habitat, which relied on the invalid definition, was in error. The commenter stated that the results of the on-going bowhead whale feeding study, while desirable, are not necessary in any determination of critical habitat. They reminded NMFS that oil activities can cause behavioral effects to bowhead whales, and that continued exploration and drilling off the coast of Alaska will exacerbate climate change (i.e., global warming). They noted the failure of industry to demonstrate their capability to recover spilled oil, and pointed to the precautionary principle in guiding any determination on whether to designate critical habitat.

Response: NMFS agrees that the results of the feeding study are not essential to a determination of this issue and recognizes the potential adverse effects of offshore development to bowhead whales. However, NMFS maintains that the combination of existing protections are adequate to protect this stock and its habitat and that the petitioned action is not necessary given existing management measures.

NMFS recognizes the benefits of applying a precautionary approach when faced with uncertainties. However, the information available concerning the biology of the bowhead whale and the effects of oil exploration development on these animals, allow NMFS to develop a reasoned and informed approach to manage and conserve this population. Many factors have the potential to adversely affect these whales; however, this population has shown continued growth even with annual subsistence removals and increased industrial activity within their range. NMFS is satisfied that the management measures currently in place control the potential effects of these activities and others.

Comment 9: Several other commenters supported the designation of critical habitat only if it can be certain not to impact subsistence hunting practices or harvest quotas.

Response: NMFS appreciates the comment and recognizes that this would be an issue of concern to a number of constituents. However, given the reasons provided earlier in this notice NMFS is not proposing to designate critical habitat. Therefore, concerns about possibly restricting subsistence hunting practices or harvest quotas do not apply.

Determination on the Petition

The biological and natural history information presented in the petition is largely factual and represents an adequate review of existing data. The petition bases its recommendations for critical habitat designation on the following points: The petitioned area contains physical and biological features essential to the conservation of the bowhead whale because these animals migrate, calve, feed, and possibly breed in these waters; and the petitioned area may require special management considerations in view of various threats including oil and gas development, pollution, and vessel activity.

In evaluating the petition, NMFS first considered the requirements of the ESA. In this case, designating critical habitat for bowhead whales is discretionary because the species was listed under the ESA prior to 1978. Consequently, NMFS considered the petition under provisions of the APA (5 U.S.C. 553(e)), which provide, among other things, that agencies must give interested persons the right to petition for the issuance of a rule.

NMFS recognizes that this area is used by bowhead whales. However, these areas, especially the U.S. Beaufort Sea, do not require special management considerations or protection through the designation of critical habitat. This area is currently managed through a combination of the ESA, the Marine Mammal Protection Act and the Fish and Wildlife Coordination Act (FWCA). In addition to managing the incidental taking of bowhead whales, the MMPA includes provisions that can be used to protect the habitat of certain marine mammals, including bowhead whales (e.g., 16 U.S.C. 1382(e)).

Federal activities in the petitioned region generally concern offshore oil and gas exploration and development. Under the ESA and the FWCA, NMFS consults with the Minerals Management Service, the Army Corps of Engineers (Corps), and the Environmental Protection Agency (EPA) regarding the effects of such development on the Outer Continental Shelf (OCS) or other waters through intensive consultation processes. NMFS reviews actions permitted by the Corps and EPA and regularly conditions associated permits through its consultative role under the FWCA.

Formal ESA consultation has occurred for every offshore development project on the OCS. NMFS completed a comprehensive ESA Section 7 consultation in 2000 on the effects of the offshore oil and gas leasing and exploration on the bowhead whale. The resulting biological opinion concluded that those actions were not likely to jeopardize the continued existence of the bowhead whale. Although NMFS

does not treat the criteria for evaluating the destruction or adverse modification of designated critical habitat and jeopardy as the same, these ESA consultations in conjunction with protective measures under the MMPA and FWCA provide the means to protect the habitat of this population of bowhead whales.

All actions, including non-Federal activities, which may kill, injure, or harm a bowhead whale are in violation of Federal law unless specifically authorized. NMFS routinely considers applications for authorizations under the MMPA for the incidental taking of bowhead whales by harassment, largely due to noise. The authorization process for these permits is comprehensive, involving close coordination with affected subsistence users and Native governments, preparation of scientific monitoring studies, and peer-review of results. Further, these authorizations require that an activity have no more than a negligible impact to the stock, and the activity cannot have an unmitigable adverse effect on the availability of the marine mammal to subsistence users. These standards provide further assurance that the activities do not have significant consequence to bowhead whales and their habitat.

Existing laws and practices provide the means to adequately protect the habitat of the bowhead whale within the U.S. Beaufort Sea. They also provide a legal framework by which any future needs for such protection could be met.

NMFS considered the known, anticipated or potential effects of development on bowhead whale habitat in the review of this petition. NMFS has no data to indicate that the physical alteration of the Chukchi or Beaufort Seas has affected the conservation of bowhead whales. In-water noise has increased with an increase in offshore development and vessel traffic. However, NMFS will continue to work with the permitting Federal agencies and with industry through the MMPA small-take authorization process to monitor the effect of noise on bowhead whales. This monitoring is intended to identify changes in whale behavior and distribution. As a result of the many informal and formal ESA section 7 consultations, as well as the other management measures and processes discussed, the provisions contained in authorizations of project activities during project planning have mitigated potential effects to the bowhead whales and their habitat.

NMFS also has considered the status and health of the Western Arctic population of bowhead whales in making this determination. The Western Arctic population of bowhead whales appears to be recovering and has demonstrated that it is capable of recovering from the effects of commercial whaling. The current best estimate for the stock abundance is 8,200 animals with an estimated annual population growth rate of 3.2 percent. While this 1996 estimate is rather dated, recent, preliminary information from the 2001 survey indicates that the abundance has continued to increase. NMFS intends to initiate a formal ESA status review after peer review of the results of the 2001 survey.

In making its determination on whether to designate critical habitat for bowhead whales, NMFS assessed the current status of the population, all of the factors known to affect the habitat of bowhead whales, and whether existing management measures are adequate to protect that habitat. Based on this assessment, NMFS is exercising its discretion not to propose designation of critical habitat for this population of bowhead whales for the following reasons: (1) the decline and reason for listing the species was overexploitation by commercial whaling, and habitat issues were not a factor in the decline; (2) there is no indication that habitat degradation is having any negative impact on the increasing population in the present; (3) the population is abundant and increasing; and (4) existing laws and practices adequately protect the species and its habitat.

NMFS will continue to monitor this stock and protect the bowhead whale and its habitat under existing authorities and agency actions, as described in this notice. NMFS will continue to review the appropriateness of designating critical habitat during all subsequent reviews of the status of this species. These reviews will also consider whether there is a need for any additional management measures in order to conserve the Western Arctic stock of bowhead whales.

Authority: 16 U.S.C. 1513, *et seq.*

Dated: August 26, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–22259 Filed 8–29–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 169

Friday, August 30, 2002

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 Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant PRT Marketing, L.L.C. of Keller, Texas an Exclusive License to U.S. Patent No. 6,061,875, ''Powered Roll Gin Stand'' issued on May 16, 2000. Notice of Availability of this invention for licensing was published in the **Federal Register** on April 30, 2001.

DATES: Comments must be received on or before September 30, 2002.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as PRT Marketing, L.L.C. has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 02–22188 Filed 8–29–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the Federally owned invention disclosed in U.S. Patent No. 5,552,295, ''Monoclonal Antibodies to Bovine Haptoglobin and Methods for Detecting Serum Haptoglobin Levels'', issued September 3, 1996, is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Syracuse Bioanalytical, Inc. of Ithaca, New York, an exclusive license to this invention.

DATES: (**Federal Register**) Comments must be received within ninety (90) calendar days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Syracuse Bioanalytical, Inc. has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 02–22187 Filed 8–29–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02–033N]

Technical Conference on Foreign Material Contaminants, Prerequisite Programs, and Validation

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it will hold a one-and-a-half-day technical conference on September 24 and 25, 2002, on foreign material contaminants, prerequisite programs, and validation to discuss issues related to these topics.

DATES: The public meeting is scheduled for Tuesday, September 24, and Wednesday, September 25, 2002. The meeting will be held from 8 a.m. to approximately 5 p.m. the first day and from 8 a.m. to 1 p.m. the second day.

ADDRESSES: The public meeting will be held at the Double Tree Inn, 1616 Dodge Street, Omaha, Nebraska; telephone (402) 346–7600. A tentative agenda is available in the FSIS Docket Room and on the FSIS Web site at *http://www.fsis.usda.gov.* FSIS welcomes comments on the topics to be discussed at the public meeting. Please send an original and two copies of comments to the FSIS Docket Room, Docket #02–033N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments and the official transcript of the meeting, when they become available, will be kept in the FSIS Docket Room at the address provided above.

FOR FURTHER INFORMATION CONTACT: Charles L. Gioglio at (202) 205–0256. Registration for the meeting will be on-site. Persons requiring a sign language

interpreter or other special accommodations should notify Ms. Sheila Johnson as soon as possible at (202) 690–6498.

SUPPLEMENTARY INFORMATION:

Background

FSIS administers the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act. The Agency's activities are intended to prevent the distribution in domestic and foreign commerce, as human food, of unwholesome, adulterated, or misbranded meat, poultry, and egg products, including products that may transmit diseases or that may be otherwise injurious to health.

Throughout the 1990's, the Agency's most important goal was an improved food safety inspection system, exemplified by the Pathogen Reduction and Hazard Analysis and Critical Control Point (PR/HACCP) regulations that are now fully implemented. Although a primary goal of the PR/HACCP rule was to eliminate, reduce, and prevent the presence of pathogens, the HACCP regulations also address physical hazards. Recently, there have been questions raised on how foreign materials need to be addressed in the HACCP environment. Therefore, to address such concerns, FSIS is holding this technical conference.

Public Meeting

At the meeting, the Agency will describe, and invite discussion and comment on, circumstances and instances of contamination; the different types of foreign material contamination; health and safety risk aspects; current state of detection and removal; verification; validation; Hazard Analysis and Critical Control Points (HACCP); critical control points and critical limits in relation to foreign materials; and the role of prerequisite programs.

The Agency will present its current thinking on controlling foreign material contaminants through HACCP, Standard Sanitation Operating Procedures (Sanitation SOPs), and prerequisite programs. Discussion panels of food safety experts will review the current state of foreign material contaminant detection, removal, and verification. The Agency intends to seek information from academia, industry sources, and consumers on the best ways to identify such potential hazards and to provide a forum for discussion on how best to control them. The Agency will open the discussion to include, and solicit comment from, the attendees.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this public meeting notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web site located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, FSIS public meetings, recalls, **Federal Register** notices, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv), go to the ''Constituent Update'' page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/htm.*

Click on the ''Subscribe to the Constituent Update Listserv'' link, then fill out and submit the form.

Done at Washington, DC on August 27, 2002.

William J. Hudnall,

Acting Administrator.

[FR Doc. 02–22189 Filed 8–29–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Hoosier National Forest, Indiana; German Ridge Restoration Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service, Hoosier National Forest intends to prepare an environmental impact statement (EIS) to disclose the environmental consequences of a vegetation restoration project. In the EIS the USDA Forest Service will address the potential environmental impacts of replacing pine plantations in the German Ridge area of Perry County, Indiana with native hardwood communities. *See* the **SUPPLEMENTARY INFORMATION** section for the purpose and need of the action.

DATES: Comments concerning the scope of the analysis must be received on or before September 30, 2002. The draft environmental impact statement is expected February 2003, and the final environmental impact statement is expected August 2003.

ADDRESSES: Send written comments to Ron Ellis, NEPA Coordinator; Hoosier National Forest; 811 Constitution Avenue; Bedford IN 47421. Send electronic comments to: *r9_hoosier_website@fs.fed.us.* See **SUPPLEMENTARY INFORMATION** section for information on how to send electronic comments.

FOR FURTHER INFORMATION, CONTACT: Ron Ellis, NEPA Coordinator, Hoosier National Forest, USDA Forest Service; telephone: 812–275–5987. *See* address above under **ADDRESSES**. Copies of documents may be requested at the same address. Another means of obtaining information is to visit the Forest Web page at *www.fs.fed.us/r9/hoosier*—click on ''Forest Projects,'' then ''Scoping Packages,'' and then ''German Ridge Restoration.''

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need for the project is to:

- Fulfill the goals and objectives of the *Forest Plan* involving the restoration of native communities (*Forest Plan,* pp. 2–2, 2–6, and 2–32).
- Replace pine plantations with native hardwood communities that include a strong component of oaks, hickories, and other fire-adapted plants.
- Restore several fire-dependent plant species associated with the barrens that are Regional Forester sensitive species or forest species of concern.

Proposed Action

To move the vegetation toward the desired condition shown in the Hoosier National Forest Land and Resource Management Plan, the Hoosier National Forest would during the next six or seven years: (1) Use prescribed burning on 2,180 acres, (2) harvest using ''clearcut with reserves'' on 498 acres, (3) clearcut 80 acres, and (4) thin 101 acres. The total treatment area is 2,180 acres. Hardwood trees, which account for 20 to 50 percent of the trees in the pine stands, would be left in the harvest areas.

Possible Alternatives

Possible alternatives include no action, an alternative that would increase the visual buffer along the German Ridge multiple use trail and leave a no-cut buffer between cutting units, an alternative that would generally remove as much pine as possible from around rare plant communities, and an alternative that would burn only the pine stands and not the adjacent hardwoods.

Responsible Official

Kenneth G. Day, Forest Supervisor; Hoosier National Forest; 811 Constitution Avenue; Bedford, Indiana 47421.

Nature of Decision To Be Made

The decision to be made is whether or not to actively convert any or all of the 2,180 acres of pine plantations to hardwood communities by harvesting and prescribed burning.

Scoping Process

The Hoosier National Forest proposes to scope for information by contacting persons and organizations on the Hoosier's mailing list and publishing a notice in the local newspaper. No scoping meetings are planned at this time. The present solicitation is for comments on this Notice of Intent and scoping materials available elsewhere, such as on the Forest webpage.

Preliminary Issues

Preliminary or potential issues have been identified from previous public comments.

(1) Timber harvesting and burning may decrease land productivity through increased erosion and soil compaction and also adversely affect water quality.

(2) Commercial logging of pine around the barrens may damage rare plants and fragile soils and increase populations of exotic plants.

(3) Harvesting the pine, including the larger allowable size of openings in the Wheatly Branch Barrens and Harding Flats Special Areas, may result in adverse visual impacts, but leaving the high risk pine along the trails may cause safety concerns. On the other hand, removing the high risk pine might increase the growth of underbrush, resulting in increased costs for trail maintenance.

(4) Leaving the diseased pines may increase the spread of disease to other pine stands in the area, and insects and disease may destroy the useable products in the area if the pine is not harvested soon.

(5) Harvesting and burning may increase fragmentation of habitat for forest interior species, create additional clearing edge, and decrease habitat for species such as the pine warbler.

(6) Air quality may be degraded by burning and harvesting.

Electronic Access and Filing Addresses

Information is available electronically on the Forest Web page: *www.fs.fed.us/r9/hoosier*—click on ''Forest Projects,'' then ''Scoping Packages,'' and then ''German Ridge Restoration.'' Send electronic comments to: *r9_hoosier_website@fs.fed.us.* When submitting electronic comments, please reference the German Ridge Restoration Project on the subject line. In addition, include your name and mailing address.

Comments Requested

This notice of intent initiates the scoping proces which guides the development of the environmental impact statement. Comments in response to this solicitation for information should focus on (1) the proposal for vegetative restoration, (2) possible alternatives for addressing issues associated with the proposal, and (3) any possible impacts associated with the proposal based on an individual's civil rights (race, color, national origin, age, religion, gender, disability, political beliefs, sexual orientation, or marital or family status). We are especially interested in information that might identify a specific undesired result of implementing the proposed action. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decisions under 36 CFR parts 215 or 217.

Additionally, pursuant to 7 CFR 1.27(d), any persons may request the agency to withhold a submission from the public record by showing how the FOIA (Freedom of Information Act) permits such confidentiality. Persons requesting such confidentiality should be aware that under FOIA confidentiality may be granted in only very limited circumstances, such as to protect trade secrets.

The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality and, should the request be denied, return the submission and notify the requester that the comments may be resubmitted with or without name and address within 90 days.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: August 26, 2002.

Kenneth G. Day,

Forest Supervisor.

[FR Doc. 02–22164 Filed 8–29–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas National Forest; California; Stream Fire Restoration Project

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent.

The following sentence was inadvertently left out of the NOI published on August 9, 2002 (67 FR 51816).

DATES: The final EIS is expected to be published in March 2003.

[No other changes are made.]

Dated: August 22, 2002.

Robert G. MacWhorter,

Acting Forest Supervisor.

[FR Doc. 02–22126 Filed 8–29–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Habersham Electric Membership Corporation; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact with respect to a request from Habersham Electric Membership Corporation for financing assistance from RUS to finance the construction of a new headquarters facility in Habersham County, Georgia.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–0468, e-mail at *bquigel@rus.usda.gov.*

SUPPLEMENTARY INFORMATION: Habersham Electric Membership Corporation proposes to construct a new headquarters facility adjacent to their existing headquarters facility located at the eastern intersection of Georgia Highway 115 and Beaver Dam Road in Habersham County, Georgia. The new headquarters will be constructed near the center of a 40-acre tract purchased by Habersham Electric Membership Corporation for this purpose at the western intersection of Georgia Highway 115 and Beaver Dam Road. The facilities will provide approximately 40,000 square-foot of warehouse, office space, conference rooms, and vehicle maintenance. The facilities will include parking for employees and visitors. Approximately 17 acres of the site will be graded to accommodate the facilities.

Copies of the Finding of No Significant Impact are available from RUS at the address provided herein or from Mr. Clyde Hardigree of Habersham Electric Membership Corporation, P.O. Box 25, Clarkesville, Georgia 30523–0025 telephone 1–800–640–6812 extension 169.

Dated: August 22, 2002.

Blaine D. Stockton,

Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 02–22155 Filed 8–29–02; 8:45 am]

BILLING CODE 3410–15–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

[Docket No. 02–1]

RIN 3014–AA26

Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines; Public Rights-of-Way

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting; correction.

SUMMARY: On June 17, 2002, the Architectural and Transportation Barriers Compliance Board (Access Board) placed in the docket and on its web site for public review and comment draft guidelines which address accessibility in the public right-of-way. The Access Board will hold an informational meeting on the draft guidelines in Portland, Oregon on October 8, 2002. The times and duration of the meeting have been revised.

DATES: Comments on the draft guidelines must be received by October 28, 2002. The Access Board will hold an informational meeting on October 8, 2002 from 8:30 a.m. until 12 p.m. and from 1:30 p.m. until 4 p.m.

ADDRESSES: Comments should be sent to the Office of Technical and Informational Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. E-mail comments should be sent to *windley@access-board.gov*. Comments sent by e-mail will be considered only if they contain the full name and address of the sender in the text. Comments will be available for inspection at the above address from 9 a.m. to 5 p.m. on regular business days. The informational meeting on October 8, 2002 will be held at the Hilton Portland, 921 SW Sixth Avenue, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Scott Windley, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0025 (voice); (202) 272–0082 (TTY). Electronic mail address: *windley@access-board.gov*.

SUPPLEMENTARY INFORMATION: In 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) established the Public Rights-of-Way Access Advisory Committee (Committee) to make recommendations on accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. The Committee was comprised of representatives from disability organizations, public works departments, transportation and traffic engineering groups, design professionals and civil engineers, pedestrian and bicycle organizations, Federal agencies, and standard-setting bodies. The Committee met on five occasions between December, 1999 and January, 2001. On January 10, 2001, the Committee presented its recommendations on accessible public rights-of-way in a report entitled ''Building a True Community.'' The Committee's report provided recommendations on access to sidewalks, street crossings, and other related pedestrian facilities and addressed various issues and design constraints specific to public rights-of-way. The report is available on the Access Board's website at *www.access-board.gov/prowac/commrept/index.htm* or can be ordered by calling the Access Board at (202) 272–0080. Persons using a TTY should call (202) 272–0082. The report is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or ASCII disk.)

The Access Board convened an ad hoc committee of Board members to review the Committee's recommendations. After reviewing the report in detail, the Board's ad hoc committee prepared recommendations for guidelines addressing accessibility in the public right-of-way. The Access Board has made the recommendations of the ad hoc committee available in the form of draft guidelines for public review and comment prior to issuing a notice of proposed rulemaking. A notice of availability of the draft guidelines and the October 8, 2002, meeting was published in the **Federal Register** on June 17, 2002 (67 FR 41206) and the draft guidelines along with supplementary information were placed in the rulemaking docket (Docket No. 02–1) for public review. The draft guidelines and supplementary information are available on the Access Board's Internet site *(http://www.access-board.gov/rowdraft.htm).* You may also obtain a copy of the draft guidelines and supplementary information by contacting the Access Board at (202) 272–0080. Persons using a TTY should call (202) 272–0082. The documents are available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or ASCII disk.) The Board will issue a notice of proposed rulemaking following a review of comments received.

In addition to welcoming written comments, the Board will hold an informational meeting to provide the public with an additional opportunity to provide input on the draft guidelines. The Board has revised the time of the meeting to 8:30 a.m. until 12 noon and from 1:30 until 4 p.m. The date and location of the meeting remain unchanged. Interested members of the public are encouraged to contact the Access Board at (202) 272–0011 (voice) or (202) 272–0082 (TTY) to preregister to attend the informational meeting. All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system will be available at the meeting. Persons attending the meeting are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 02–22010 Filed 8–29–02; 8:45 am]

BILLING CODE 8150–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 29, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Binder, Looseleaf
7510–01–368–3486.
7510–01–412–6338.
NPA: South Texas Lighthouse for the Blind, Corpus Christi, Texas.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Product/NSN: Dual Head Stethoscope
6515–00-NIB–0115.
NPA: Central Association for the Blind & Visually Impaired, Utica, New York.
Contract Activity: Department of Veterans Affairs Acquisition Center, Hines, Illinois.

Product/NSN: Easel, Wallboard, Magnetic
7520–00–NIB–1368.
7520–00–NIB–1369.
7520–00–NIB–1371.
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Product/NSN: Holder, Label, w/slit on a spool
9905–05–000–7417.
NPA: ODC Government Services, Inc., Wisconsin Rapids, Wisconsin.
Contract Activity: U.S. Postal Service, Topeka, Kansas.

Services

Service Type/Location: Grounds Maintenance, U.S. Department of Agriculture, Phoenix, Arizona.
NPA: The Centers for Habilitation/TCH, Tempe, Arizona.
Contract Activity: USDA, Agriculture Research Service, REE, PWA, LSS, Phoenix, Arizona.

Service Type/Location: Janitorial/Custodial, Environmental Protection Agency, Standard Chlorine Site, Delaware City, Delaware.
NPA: The Chimes, Inc., Baltimore, Maryland.
Contract Activity: Environmental Protection Agency, Philadelphia, Pennsylvania.

Service Type/Location: Janitorial/Custodial, Stewart Newburgh USARC, New Windsor, New York.
NPA: Occupations, Inc., Middletown, New York.
Contract Activity: 77th Regional Support Command (DOC), Fort Totten, New York.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting,

recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for deletion from the Procurement List.

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Janitorial/Custodial, U.S. Federal Building, Minneapolis, Minnesota.
NPA: Tasks Unlimited, Inc., Minneapolis, Minnesota.
Contract Activity: GSA, Public Buildings Service.

G. John Heyer,

General Counsel.

[FR Doc. 02–22212 Filed 8–29–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: September 29, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On May 24, June 21, June 28, and July 5, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 36567 42235, 43582, and 44808) of proposed additions to the Procurement List.

The Following Comments Pertain to CD–ROM Replication—Program A890–M

Comments were received from one of the two current contractors for this CD–ROM replication program, in response to a request for sales data. In addition to providing the sales data, the contractor indicated that losing the contract for this replication program would remove the sales volume needed for the company to make a profit. The contractor claimed to have lost the contract for another Government Printing Office (GPO) CD–ROM replication program to the same nonprofit agency under the Committee's program, and raised the possibility of losing a third program the same way. All these impacts, according to the contractor, would combine to cause severe financial impact and job loss for the contractor.

In a follow-up letter, the contractor raised several issues which it contended made this CD–ROM replication program inappropriate for addition to the Committee's program. The contractor contended that the manufacturing process is not suitable for people who are blind or have other severe disabilities and is actually dangerous for such people. The contractor stated that the replication program is designed for multiple contractors, with volume and turnaround demands that make it inappropriate for any one contractor, particularly a small operation like the designated nonprofit agency. The contractor further noted that GPO rules prohibit subcontracting of the manufacturing operation. Finally, the contractor proposed that the nonprofit agency devote its efforts to production of blank CD–R disks for the Government rather than CD–ROM replication programs, as these disks are produced by large multinational companies which would not be as severely affected by losing this work as would the commenting contractor if the CD–ROM replication program at issue were added to the Committee's Procurement List.

In regard to the contractor's impact claims, the contractor was not the current contractor at the time the Committee added the other CD–ROM replication program to the Procurement List. Because the contractor lost the contract to another vendor, it only had a hope of regaining it through the competitive process, and losing this hope is not considered severe adverse impact by the Committee. However, even if the value of the contractor's former contract for the other replication program were to be added to the value of its contract for the replication program at issue in this Procurement List addition, the percentage of the contractor's total sales which the two contracts represent does not reach the level of impact which the Committee normally considers to be severe.

The Committee is not processing the third replication program mentioned by the contractor for addition to the Procurement List at this time. Consequently, the only impact which the Committee's program can take into account in calculating impact on the contractor is that of the A890–M CD–ROM replication program which is being added to the Procurement List by this notice. The sales which the contractor will lose because of this action are well below the level which the Committee normally considers to constitute severe adverse impact on a contractor. The Committee staff, acting through the cognizant central nonprofit agency, has conferred with GPO contracting personnel and the designated nonprofit agency about the issues raised in the contractor's follow-up letter. Both organizations are satisfied that the nonprofit agency can meet the volume and turnaround requirements of this replication program, without resorting to a subcontractor. The nonprofit agency has modified the replication equipment to allow it to be used safely by people with visual impairments, and is successfully using people with visual impairments in all phases of CD–ROM production, order fulfillment, and packaging except disk printing, which it will be able to do safely in-house by January 2003. The equipment which the nonprofit agency has is not suitable for production of blank CD–R disks, so the contractor's alternative proposal would not be feasible.

The Following Material Pertains to All of the Items Being Added to the Procurement List

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small

organizations that will furnish the products and services the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Battery, Nonrechargeable
6135–00–826–4798 (Remaining Requirement for DSCR).
6135–00–900–2139 (Remaining Requirement for DSCR).
NPA: Eastern Carolina Vocational Center, Inc., Greenville, North Carolina.
Contract Activity: Defense Supply Center Richmond, Richmond, Virginia

Product/NSN: Battery, Nonrechargeable
6135–00–985–7845 (Total Requirement for DSCR).
NPA: Eastern Carolina Vocational Center, Inc., Greenville, North Carolina.
Contract Activity: Defense Supply Center Richmond, Richmond, Virginia.

Product/NSN: Board, Assembly, Jack, Ground
2510–00–741–7585.
NPA: Pennyroyal Regional MH–MR Board, Inc., Hopkinsville, Kentucky.
Contract Activity: Defense Supply Center Columbus, Columbus, Ohio.
Product/NSN: Pen, Vista Gel
7520–00–NIB–0614 (Blue Medium Point).
7520–00–NIB–0615 (Black Medium Point).
NPA: Industries of the Blind, Inc., Greensboro, North Carolina.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Product/NSN: Pen, Refill, Vista Gel
7510–00–NIB–1588 (Blue Medium Point).
7510–00–NIB–1589 (Black Medium Point).
NPA: Industries of the Blind, Inc., Greensboro, North Carolina.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Product/NSN: USMC Individual First Aid Kit
6545–00–NSH–2001 (Complete Kit).
6545–00–NSH–2002 (Roll Insert).
6545–00–NSH–2003 (CD Holder).
NPA: Chautauqua County Chapter, NYSARC, Jamestown, New York.
Contract Activity: U.S. Marine Corps, Quantico, Virginia.

Services

Service Type/Location: CD–ROM Replication—Program A890–M
Government Printing Office, Washington, DC.

NPA: Association for the Blind & Visually Impaired & Goodwill Industries of Greater Rochester, Rochester, New York.
Contract Activity: Government Printing Office, Washington, DC.
Service Type/Location: Janitorial/Custodial
Naval Air Station, Buildings 180 and 349.
Whidbey Island.
Oak Harbor, Washington.
NPA: New Leaf, Inc., Oak Harbor, Washington.
Contract Activity: Naval Facilities Engineering Command, Oak Harbor, Washington.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act(41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

After consideration of the relevant matter presented, the committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following products are hereby deleted from the Procurement List:

Products

Product/NSN: Strainer/M.R. 818.
Product/NSN: Strainer and Pastry Brush/M.R. 817.
Product/NSN: Strainer and Pastry Brush/M.R. 829.
NPA: Alabama Industries for the Blind, Talladega, Alabama.
Product/NSN: Bowl, Deodorizer/M.R. 503.
Product/NSN: Bowl, Deodorizer/M.R. 504.
NPA: Tampa Lighthouse for the Blind, Tampa, Florida.
Product/NSN: Cutlery, Heavy Duty/M.R. 597.
NPA: Ho'opono Workshop for the Blind, Honolulu, Hawaii.
NPA: MidWest Enterprises for the Blind, Inc., Kalamazoo, Michigan.
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington.
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.
Product/NSN: Potpourri/M.R. 404.
NPA: Envision, Inc., Wichita, Kansas.
Product/NSN: Broom, Corn/M.R. 960.
Product/NSN: Mop, Deck/M.R. 961.
Product/NSN: Refill, Mop, Dust/M.R. 985.
NPA: Mississippi Industries for the Blind, Jackson, Mississippi
Product/NSN: Air Deodorizer, Push-Up, Floral Spring/M.R. 506.
Product/NSN: Air Deodorizer, Push-up, Lemon/M.R. 507.
NPA: Lighthouse for the Blind, St. Louis, Missouri.
Product/NSN: Aqua Plunger Mop/M.R. 1026.
NPA: ISIGHT, Inc., Las Vegas, Nevada.
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Product/NSN: Brush, Duster/M.R. 913.
Product/NSN: Gloves, Latex/M.R. 516.
Product/NSN: Gloves, Latex/M.R. 517.
Product/NSN: Gloves, Latex/M.R. 518.
NPA: New York City Industries for the Blind, Brooklyn, New York.
Product/NSN: Mop, Sponge, Block/M.R. 990.
Product/NSN: Sac Saver/M.R. 1010.
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Product/NSN: Broom, Mixed Fiber/M.R. 901.
Product/NSN: Fabric Softener Sheets, Reusable/M.R. 519.
Product/NSN: Refill, Mop, Dust/M.R. 985.
NPA: Industries of the Blind, Inc., Greensboro, North Carolina.
Product/NSN: Apron, Child, Painted Design/M.R. 780.
NPA: Lions Industries for the Blind, Inc., Kinston, North Carolina.
Product/NSN: Character Lunch Bags/M.R. 402.
Product/NSN: Master Baster/M.R. 802.
Product/NSN: Soap Shipper/M.R. 431.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.
Product/NSN: Kitchen, Utensils/M.R. 848.
NPA: Cincinnati Association for the Blind, Cincinnati, Ohio.
Product/NSN: Bag, Canvas/M.R. 701
NPA: Lions Volunteer Blind Industries, Inc., Morristown, Tennessee.
Product/NSN: Clothspin, Plastic/M.R. 570.
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, Texas.
Product/NSN: Cleaner, All Purpose/M.R. 510.
NPA: The Lighthouse of Houston, Houston, Texas.
Product/NSN: Cover, Ironing Board/M.R. 965.
Product/NSN: Pad, Microwave/M.R. 562.
Product/NSN: Pad, Replacement, Handle Scrubber/M.R. 540.
Product/NSN: Pad, Replacement, Handle Scrubber/M.R. 545.
Product/NSN: Pad, Replacement, Handle Scrubber/M.R. 546.
Product/NSN: Pad, Scouring/M.R. 547.
Product/NSN: Scrubber/M.R. 542.
NPA: Beacon Lighthouse, Inc., Wichita Falls, Texas.
Product/NSN: Broom, Upright/M.R. 951.
Product/NSN: Broom, Whisk/M.R. 910.
Product/NSN: Brush, Duster/M.R. 913.
Product/NSN: Executive Twist Pen Shipper/M.R. 009.
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.
Product/NSN: Dog Bones/M.R. 405.
Product/NSN: Dog Bones/M.R. 406.
Product/NSN: Dog Bones/M.R. 407.
Product/NSN: Dog Bones/M.R. 408.
Product/NSN: Dog Bones/M.R. 409.
Product/NSN: Dog Bones/M.R. 410.
Product/NSN: Dog Bones/M.R. 411.
NPA: Wiscraft Inc.—Wisconsin Enterprises for the Blind, Milwaukee, Wisconsin.
Product/NSN: Brush, Bottle/M.R. 956.

Product/NSN: Brush, Pastry and Basting/M.R. 959.
Product/NSN: Cover, Ironing Board/M.R. 964.
Product/NSN: Handle, Mop, Spring Lever/M.R. 920.
Product/NSN: Kitchen, Utensils/M.R. 828.
Product/NSN: Kitchen, Utensils/M.R. 850.
Product/NSN: Kitchen, Utensils/M.R. 860.
Product/NSN: Kitchen, Utensils/M.R. 862.
NPA: None currently authorized.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia, for all the Military Resale Products.

G. John Heyer,

General Counsel.

[FR Doc. 02–22213 Filed 8–29–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

AGENCY: U.S. Census Bureau.

Title: Annual Retail Trade Survey.

Form Number(s): SA–44, SA–44A, SA–44C, SA–44E, SA–44N, SA–44S, SA–45, SA–45C, & SA–721.

Agency Approval Number: 0607–0013.

Type of Request: Revision of a Currently Approved Collection.

Burden: 9,299 hours.

Number of Respondents: 22,977.

Avg Hours Per Response: 24 minutes.

Needs and Uses: The Annual Retail Trade Survey (ARTS) provides the only continuing official measure of annual total retail sales, e-commerce sales, end-of-year inventories, sales/inventory ratios, purchases, inventory valuation methods, gross margin, and end-of-year accounts receivables for retailers and annual sales and e-commerce sales for accommodation and food services firms in the United States.

The data collected in the annual retail survey provide a current statistical picture of the retail and food services and accommodations portions of consumer activity. Also, the estimates compiled from this survey provide valuable information for economic policy decisions and actions by government and are widely used by private businesses, trade organizations, professional associations, and others for market research and analysis. The sales and receipts are used by the Bureau of Economic Analysis (BEA) in determining the consumption portion of the Gross Domestic Product (GDP).

Our last request included a total of seven report forms: the SA–44, SA–44A, SA–45, SA–44C, SA–45C, & SA–721 with one supplemental form the SA–44N. The SA–44N included only additional questions asked exclusively of non-store retailers, office supply companies, and computer stores. This request is for the clearance of nine similar report forms, the SA–44, SA–44A, SA–44C, SA–44E, SA–44N, SA–44S, SA–45, SA–45C, & SA–721. The two new forms, the SA–44E and SA–44S, as well as the SA–44N, incorporate those additional questions included originally on the supplemental form of our last request. These nine forms will enable us to collect information on a North American Industry Classification System (NAICS) basis and to request similar data items. A variety of forms are needed to address the size of the firm, its specific kind-of-business, or the data items requested.

Affected Public: Business or other for-profit.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 182, 224, and 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202)482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 26, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–22153 Filed 8–29–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

AGENCY: National Institute of Standards and Technology (NIST).

Title: Industrial Research Institute (IRI) Study on Investment Decision Tools for High-Risk/High-Payoff Research & Development.

Form Number: None.

OMB Approval Number: None.

Type of Request: Regular.

Number of Respondents: 80.

Average Hours Per Response: Baseline Survey 15 minutes; teleconference follow-up interviews 30 minutes; annual survey 10 minutes.

Needs and Uses: This information will be collected in conjunction with a joint study by the IRI and NIST to understand the investment decision-tools that medium-to-large companies use for funding high-risk technology development. The information collected from IRI member-companies will help the Advanced Technology Program to make more informed decisions when evaluating funding proposals. IRM and its member companies will learn which methods are most cost-effective for making investment decisions regarding high-risk-high-payoff R&D.

Affected Public: Business or other for-profit organizations.

Frequency: Annual, semi-annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

Written comments and recommendations for this proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 26, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–22154 Filed 8–29–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–412–801]

Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews.

EFFECTIVE DATE: August 30, 2002.

SUMMARY: On April 10, 2002, the Department of Commerce published the preliminary results of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, and the United Kingdom. The reviews cover 40 manufacturers/exporters. The period of review is May 1, 2000, through April 30, 2001.

Based on our analysis of the comments received, we have made changes, including corrections of certain programming and other clerical errors, in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of the Reviews.''

FOR FURTHER INFORMATION: Please contact the appropriate case analysts for the various respondent firms as listed below; Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

France

Dmitry Vladimirov (SKF), Lyn Johnson (Bearing Discount Int./Germany, Rodamientos Rovi/Venezuela, Rovi-Valencia/Venezuela, Rovi-Marcay/Venezuela, RIRSA/Mexico, DCD/Northern Ireland, EuroLatin Ex. Services/United Kingdom (collectively, Resellers)), Mark Ross, or Richard Rimlinger.

Germany

Dunyako Ahmadu (Paul Mueller, FAG), Thomas Schauer (Torrington Nadellager), Lyn Johnson (Resellers), Mark Ross, or Richard Rimlinger.

Italy

Brian Ellman (SKF), Janis Kalnins (FAG), Lyn Johnson (Resellers), Mark Ross, or Richard Rimlinger.

Japan

Edythe Artman (Nachi), Minoo Hatten (NSK), Lyn Johnson (Koyo, Asahi), Fred Aziz (Nankai Seiko), Janis Kalnins (NPBS), Kristin Case (Isuzu), J. David Dirstine (NTN), George Callen (Osaka Pump, Takeshita), Mark Ross, or Richard Rimlinger.

United Kingdom

Thomas Schauer (RHP/NSK), Dmitry Vladimirov (Barden), Catherine Cartsos (FAG), Mark Ross, or Richard Rimlinger.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (2001).

Background

On April 10, 2002, the Department published the preliminary results of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof (BBs) from France, Germany, Italy, Japan, and the United Kingdom (67 FR 17361) (*Preliminary Results*). The period of review (POR) is May 1, 2000, through April 30, 2001. We invited interested parties to comment on the preliminary results. At the request of certain parties, we held hearings for Japan-specific issues on June 6, 2002, and for Germany-specific issues on June 11, 2002. The Department has conducted these administrative reviews in accordance with section 751 of the Act.

Scope of the Orders

The products covered by these orders, ball bearings, mounted or unmounted, and parts thereof, include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, BBs with integral shafts, BBs (including radial BBs) and parts thereof, and housed or mounted BB units and parts thereof.

Imports of these products are currently classifiable under the following *Harmonized Tariff Schedule of the United States* (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

The HTSUS item numbers are provided for convenience and customs purposes. They are not determinative of the products subject to the order. The written descriptions remain dispositive.

The size or precision grade of a bearing does not influence whether the bearing is covered by an order. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scopes of these orders. For unfinished parts, such parts are included if (1) they have been heat-treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation. The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scopes of these orders.

For a listing of scope determinations which pertain to the orders, see the ''Scope Determinations Memorandum'' (Scope Memo) from the Antifriction Bearings Team to Laurie Parkhill, dated April 1, 2002. The Scope Memo is on file in the Central Records Unit (CRU), Main Commerce Building, Room B–099.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these concurrent administrative reviews of the orders on ball bearings are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary, to Faryar Shirzad, Assistant Secretary, dated August 23, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which

are in the Decision Memo, is attached to this notice as an Appendix. This Decision Memo, which is a public document, is on file in the CRU, Main Commerce Building, Room B–099, and is accessible on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memo are identical in content.

Sales Below Cost in the Home Market

The Department disregarded home-market sales that failed the cost-of-production test for the following firms for these final results of reviews:

Country	Company
France	SKF
United Kingdom	NSK
	Barden
Italy	SKF
Japan	Koyo
	NSK
	NTN
	Nachi
	Asahi
	NPBS
	Nankai Seiko
Germany	Paul Mueller

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made revisions that have changed the results for certain firms. We have corrected programming and clerical errors in the preliminary results, where applicable. Any alleged programming or clerical errors about which we or the parties do not agree are discussed in the relevant sections of the Decision Memo, which is accessible on the Web at *http://ia.ita.doc.gov/frn* and is on file in the CRU, Room B–099.

Final Results of Reviews

We determine that the following percentage weighted-average margins on BBs exist for the period May 1, 2000, through April 30, 2001:

Company	Margin (percent)
FRANCE	
SKF France S.A. and Sarma	8.51
Bearings Discount International GmbH	66.18
Rodamientos Rovi	(2)
Rovi-Valencia	(2)
Rovi-Marcay	(2)
Representaciones Industriales Rodriguez S.A.	66.18
DCD	66.18
EuroLatin Export Services, Ltd.	(2)
GERMANY	
FAG Kugelfischer Georg Schaefer AG	0.34
Torrington Nadellager GmbH	1.22
Bearings Discount International GmbH	70.41
Paul Mueller Industrie GmbH & Co. KG	0.04
Rodamientos Rovi	(2)
Rovi-Valencia	(2)
Rovi-Marcay	(2)
Representaciones Industriales Rodriguez S.A.	70.41
DCD	70.41
EuroLatin Export Services, Ltd.	(2)
ITALY	
FAG Italia S.p.A.	1.42
SKF Industrie S.p.A.	3.70
Bearings Discount International GmbH	68.29
Rodamientos Rovi	(2)
Rovi-Valencia	(2)
Rovi-Marcay	(2)
Representaciones Industriales Rodriguez S.A.	68.29
DCD	68.29
EuroLatin Export Services, Ltd.	(2)
JAPAN	
Koyo Seiko Co., Ltd.	7.70
NSK Ltd.	6.07
NTN Corporation	9.72
Osaka Pump Co., Ltd.	0.98
Takeshita Seiko Co., Ltd.	2.88
Asahi Seiko Co., Ltd.	2.51
Isuzu Motors Ltd.	73.55
Nachi-Fujikoshi Corporation	10.33
Nankai Seiko Co., Ltd.	0.59
Nippon Pillow BlockSales Co., Ltd.	3.42
UNITED KINGDOM	
NSK Bearings Europe, Ltd.	16.87
FAG (U.K.) Ltd.	(1)
The Barden Corporation (U.K.) Ltd.	3.87

[1] No shipments or sales subject to this review. The deposit rate remains unchanged from the last relevant segment of the proceeding in which the firm had shipments/sales.

[2] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.

Resellers

With respect to EuroLatin Export Services Limited, Rodamientos Rovi C.A., Rovi-Maracay, and Rovi-Valencia and the reviews of the antidumping duty orders on BBs from France, Germany, and Italy, we have analyzed their claims that they had no shipments during the POR. We have based our analysis on letters from these respondents indicating that they had no shipments and on our examination of the Customs Service database for imports of entered merchandise involving these respondents. Based upon the record and our methodology of reviewing Customs Service information, subject to the limitations discussed below, we have determined that the respondents at issue had no shipments during the POR, and we have not established margins for use as future cash-deposit rates.

Notwithstanding these respondents' letters reporting that they had made no shipments, in this case it is impossible to establish the accuracy of their statements with certainty from Customs Service data. The Customs information does not necessarily identify whether these resellers were involved in shipments of subject BBs during the POR. Therefore, we are not rescinding the reviews of these parties and we will instruct the Customs Service at the time of liquidation to review all documentation for suspended entries of subject merchandise. If the Customs Service finds that, in fact, any of these ''no-shipment'' respondents had shipments of subject merchandise during the POR, we will instruct the Customs Service to apply a facts-available rate to such respondents based on the adverse facts-available rate we have determined for BBs from the applicable country of origin (France, Germany, or Italy). See *Preliminary Results*, 67 FR at 17362, for a description of our determination of these rates.

Assessment Rates

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of reviews. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer-specific assessment rate or value for subject merchandise.

a. Export Price

With respect to export-price (EP) sales, we divided the total dumping margins (calculated as the difference between normal value (NV) and the EP) for each exporter's importer/customer by the total number of units the exporter sold to that importer/customer. We will direct the Customs Service to assess the resulting per-unit dollar amount against each unit of merchandise on each of that importer's/customer's entries under the relevant order during the review period.

b. Constructed Export Price

For constructed export-price (CEP) sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. When an affiliated party acts as an importer for EP sales we have included the applicable EP sales in the assessment-rate calculation. We will direct the Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period (see 19 CFR 351.212(a)).

Cash-Deposit Requirements

To calculate the cash-deposit rate for each respondent (*i.e.*, each exporter and/or manufacturer included in these reviews), we divided the total dumping margins for each company by the total net value of that company's sales of merchandise during the review period subject to each order.

To derive a single deposit rate for each respondent, we weight-averaged the EP and CEP deposit rates (using the EP and CEP, respectively, as the weighting factors). To accomplish this when we sampled CEP sales, we first calculated the total dumping margins for all CEP sales during the review period by multiplying the sample CEP margins by the ratio of total days in the review period to days in the sample weeks. We then calculated a total net value for all CEP sales during the review period by multiplying the sample CEP total net value by the same ratio. Finally, we divided the combined total dumping margins for both EP and CEP sales by the combined total value for both EP and CEP sales to obtain the deposit rate.

We will direct the Customs Service to collect the resulting percentage deposit rate against the entered customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. Entries of parts incorporated into finished bearings before sales to an unaffiliated customer in the United States will receive the respondent's deposit rate applicable to the order.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of ball bearings entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash-deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and, therefore, *de minimis*, the Department will not require a deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be the ''All Others'' rate for the relevant order made effective by the final results of review published on July 26, 1993 (see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al: Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729 (July 26, 1993), and, for BBs from Italy, see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 61 FR 66472 (December 17, 1996)). These ''All Others'' rates are the ''All Others'' rates from the relevant LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO are sanctionable violations.

We are issuing and publishing these determinations and notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: August 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

Comments and Responses

1. Facts Available
2. Margin Calculation (Zeroing of Positive Margins)
3. Export Price/Constructed Export Price
4. Price Adjustments
   A. Commissions
   B. Billing Adjustments
   C. Credit Expenses
   D. Direct and Indirect Selling Expenses
   E. Others
5. Arm's-Length Test and Sales to Affiliated Parties
6. Sample Sales, Prototype Sales, and Sales Outside the Ordinary Course of Trade
7. Cost of Production and Constructed Value
   A. Profit for CV
   B. Affiliated-Party Inputs
   C. Depreciation of Idle Assets
   D. Loss on Marketable Securities
   E. Others
8. Packing and Movement Expenses
9. Discounts and Rebates
10. Miscellaneous
    A. Improper Service
    B. Consignment Sales
    C. Model Matching
    D. Clerical Errors
    E. Others

[FR Doc. 02–22254 Filed 8–29–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–840]

Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 30, 2002.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Daniel O'Brien, at (202) 482–0631 or (202) 482–1376, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to

the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (2001).

Final Determination

We determine that carbon and certain alloy steel wire rod (steel wire rod) from Canada is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

Case History

The preliminary determination in this investigation was issued on April 2, 2002. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod from Canada,* 67 FR 17389 (April 10, 2002). Since the publication of the preliminary determination, the following events have occurred:

In April and May 2002, the Department verified the responses submitted by the three respondents in the investigation: Ispat Sidbec Inc. (ISI), Ivaco, Inc. (Ivaco) and Stelco, Inc. (Stelco). Verification reports were issued in May and June 2002. On July 8, 2002, we received case briefs from the petitioners [1] and the three respondents. On July 17, 2002, we received rebuttal briefs from the petitioners and the respondents. A public hearing was not held.

Scope Issues

Since the *Preliminary Determination* a number of parties have filed requests asking the Department to exclude various products from the scope of the concurrent antidumping duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago and Ukraine) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations. On May 6, 2002, Ispat Hamburger Stahlwerke GmbH and Ispat Walzdraht Hochfeld GmbH (collectively, Ispat Germany) requested an exclusion for ''super clean valve spring wire.'' Two parties filed additional exclusion requests on June 14, 2002: Bluff City Steel asked that the Department exclude ''clean-steel precision bar,'' and Lincoln Electric Company sought the exclusion of its EW 2512 grade of metal inert gas welding wire. On June 28, 2002, petitioners filed objections to a range of scope exclusion requests including: (i) Bluff City Steel's request for clean precision bar; (ii) Lincoln Electric Company's request for EW 2512 grade wire rod; (iii) Ispat Germany's request for ''super clean valve spring wire;'' (iv) Tokusen USA's January 22, 2002 request for 1070 grade tire cord and tire bead quality wire rod (tire cord wire rod); and (v) various parties' request for 1090 grade tire cord wire rod.

In addition, Moldova Steel Works requested the exclusion of various grades of tire cord wire rod on July 17, 2002. The Rubber Manufacturers Association (the RMA), Ispat Germany, Lincoln Electric and Bluff City filed rebuttals to the petitioners' June 28, 2002 submission on July 8, 11, 17, and 29, 2002, respectively. The RMA filed additional comments on July 30, 2002.[2]

The Department has analyzed these requests and the petitioners' objections and we find no modifications to the scope are warranted. *See* Memorandum from Richard Weible to Faryar Shirzad, ''Carbon and Certain Alloy Steel Wire Rod; Antidumping Duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine) and Countervailing Duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) Investigations: Requests for Scope Exclusion'' dated August 23, 2002, which is on file in room B–099 of the main Commerce building.

Scope of Investigation

The merchandise covered by this investigation is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.,* products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other

[1] The petitioners in this investigation are Co-Steel Raritand, Inc., and North Start Steel Texas, Inc.

[2] On August 9, 2002, Bekaert Corporation requested an exclusion for certain high chrome/high silicon steel wire rod, from the scope of these investigations. This request was filed too late to be considered for the final determinations in these investigations.

rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (i.e., August 2001).

Verification

As provided in section 782(i) of the Act, we conducted verification of the cost and sales information submitted by the three respondents. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping proceeding are listed in the appendix to this notice and addressed in the *Decision Memorandum* dated August 23, 2002, and are hereby adopted by this notice. The *Decision Memorandum* is on file in room B–099 of the main Department of Commerce building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the World Wide Web at *http://www.ita.doc.gov/import_admin/records/frn.* The paper and electronic versions of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Determinations

Based on our findings at verification, and analysis of comments received, we have made adjustments to the preliminary determination calculation methodologies in calculating the final dumping margins in these proceedings. These adjustments are discussed in the *Decision Memorandum* for this investigation.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of steel wire rod exported from Canada, with the exception of merchandise produced by Stelco, Inc., that are entered, or withdrawn from warehouse, for consumption on or after the date of the preliminary determination. The Customs Service shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown below. Because we have determined that steel wire rod produced by Stelco, Inc. is not being sold at LTFV, we are not directing the Customs Service to suspend liquidation of this merchandise. The suspension of liquidation instructions will remain in effect until further notice.

We determine that the following weighted-average dumping margins exist for Canada:

Manufacturer/exporter	Margin (percent)
ISI	2.54
Ivaco	13.35
Stelco	*1.18
All Others	9.91

**De minimis*—excluded from the calculation of the ''All Others'' rate.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine, within 45 days, whether imports of subject merchandise from Canada are causing material injury, or threaten material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs Service officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determinations is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: August 23, 2002.

Faryar Shizad,

Assistant Secretary for Import Administration.

Appendix

Issues Covered in Decision Memorandum

Comment 1: Treatment of Negative Margins

Sales Issues Specific to Ivaco

Comment 2: Reported U.S. Inventory Carrying Costs
Comment 3: Indirect Selling Expenses Incurred in Canada
Comment 4: Facts Available Rate for Further Manufactured Sales
Comment 5: Sivaco Georgia's (SGA) Freight Revenue for Certain Sales
Comment 6: The Department Should Exclude All of Ivaco's Intra-Company Sales
Comment 7: Three Sales Identified by Ivaco as U.S. Sales
Comment 8: The Department Should Convert Ivaco's Home Market Gross Unit Price and Associated Expenses to a Uniform Currency

Cost Issues Specific to Ivaco

Comment 9: Deferred Production Costs
Comment 10: Ivaco's Reported Billet Costs and Cost of Manufacture
Comment 11: Financial Expense Ratio
Comment 12: General and Administrative Expense Ratio

Sales Issues Specific to ISI

Comment 13: Date of Payment for Unpaid Sales to a U.S. Customer
Comment 14: Matching of Prime Material to Non-Prime Material
Comment 15: Walker Wire's Sales of Wire Products

Comment 16: Segregation of Further-Manufactured Sales from Other Constructed Export Price Sales

Cost Issues Specific to ISI

Comment 17: Affiliated Party Inputs
Comment 18: General and Administrative Depreciation Expense
Comment 19: General and Administrative Expense—Further Manufacturing
Comment 20: Adjustment to Walker Wire's Cost of Manufacturing

Sales Issues Specific to Stelco

Comment 21: Sale Amount
Comment 22: Stelco's Sales to Stelfil Ltee. (Stelfil)

Cost Issues Specific to Stelco

Comment 23: ''Collapsed Entities'' Rule
Comment 24: Purchase of Pulverized Coal, Bloom Reheating Services and Billets
Comment 25: Purchases of Iron Ore
Comment 26: General and Administrative Expense Rates
Comment 27: Foreign Exchange Gains and Losses
Comment 28: Short-Term Interest Income
Comment 29: Further Manufacturing Costs
Comment 30: Minor Errors

[FR Doc. 02–22246 Filed 8–29–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–812]

Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 30, 2002.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy, Stephen Bailey, or Lisa Shishido, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0165, (202) 482–1102, and (202) 482–1382, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute, are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''the Department'') regulations refer to the regulations at 19 CFR part 351 (2001).

Final Determination

We determine that carbon and certain alloy steel wire rod from Ukraine is being sold, or is likely to be sold, in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

This investigation was initiated on September 24, 2001. *See Notice of Initiation of Antidumping Duty Investigations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela,* 66 FR 50164 (October 2, 2001) (''*Notice of Initiation*''). The sole participating respondent in this investigation is Krivorozhstal State Mine-Metallurgical Works (''Krivorozhstal''). The petitioners in this investigation are Co-Steel Raritan, Inc., Georgetown Steel Company, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (''Petitioners''). On October 17, 2001, the Government of Ukraine (''GOU'') submitted a request for, and information in support of, graduation to market economy status for Ukraine. On April 10, 2002, the Department of Commerce (''the Department'') published its *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod From Ukraine,* 67 FR 17367 (April 10, 2002) (''*Preliminary Determination*''). Since the *Preliminary Determination* of the investigation, the following events have occurred.

On April 17, 2002, the Department issued to Krivorozhstal a letter regarding its March 19, 2002 submission. On April 24, 2002, Krivorozhstal responded to this letter.

On April 17, and April 18, 2002, respectively, the GOU submitted a request and proposal for a suspension agreement in accordance with the Department's regulations at 19 CFR 351.208. On April 24, 2002, the GOU submitted a request to discuss its proposed suspension agreement.

On April 24, 2002, Krivorozhstal submitted a request that the Department issue to it a market economy questionnaire. On April 30, 2002, Petitioners submitted a letter in opposition to this request.

On May 20 and May 21, 2002, Krivorozhstal submitted public pricing information regarding its factors of production. On May 21, 2002, Krivorozhstal requested that the Department allow the late submission of its public pricing information concerning water. On May 24, 2002, Petitioners submitted a letter in opposition to this request. On June 6, 2002, the Department issued a questionnaire to Krivorozhstal regarding public pricing information, including the information concerning water. On June 20, 2002, Krivorozhstal responded to this questionnaire.

On June 24, 2002, Krivorozhstal submitted production and sales documentation for byproducts that it claimed it generated and sold during the POI. On June 26, 2002, the Department requested information from Krivorozhstal regarding its June 24, 2002, submission. See *Memorandum to the File from Lori Ellison to James C. Doyle,* June 26, 2002. On June 27, 2002, Krivorozhstal provided a response to this request.

On June 6, 2002, the Department issued a verification agenda to Krivorozhstal. On June 27, 2002, Petitioners submitted comments regarding the Department's verification. The Department conducted a verification of Krivorozhstal's sales and factors of production data at Krivorozhstal's headquarters in Krivoii Rog, Ukraine from July 1, 2002, through July 5, 2002. *See Memorandum to the File from Lori Ellison and Stephen Bailey: Verification of Sales and Factors of Production for Krivorozhstal in the Antidumping Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from Ukraine,* July 19, 2002 (''Verification Report'').

On July 26, 2002, Petitioners and Krivorozhstal submitted case briefs with respect to the sales and factors of production verification and the Department's *Preliminary Determination.* Petitioners and Krivorozhstal submitted rebuttal briefs on July 31, 2002.

The Department has conducted and completed the investigation in accordance with section 735 of the Act.

Scope of Investigation

The merchandise covered by this investigation is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and

(e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should Petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Scope Issues

Since the *Preliminary Determination* a number of parties have filed requests asking the Department to exclude various products from the scope of the concurrent antidumping duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago and Ukraine) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations. On May 6, 2002, Ispat Hamburger Stahlwerke GmbH and Ispat Walzdraht Hochfeld GmbH (collectively, Ispat Germany) requested an exclusion for ''super clean valve spring wire.'' Two parties filed additional exclusion requests on June 14, 2002: Bluff City Steel asked that the Department exclude ''clean-steel precision bar,'' and Lincoln Electric Company sought the exclusion of its EW 2512 grade of metal inert gas welding wire. On June 28, 2002, Petitioners filed objections to a range of scope exclusion requests including: (i) Bluff City Steel's request for clean precision bar; (ii) Lincoln Electric Company's request for EW 2512 grade wire rod; (iii) Ispat Germany's request for ''super clean valve spring wire;'' (iv) Tokusen USA's January 22, 2002 request for 1070 grade tire cord and tire bead quality wire rod (tire cord wire rod); and (v) various parties' request for 1090 grade tire cord wire rod.

In addition, Moldova Steel Works requested the exclusion of various grades of tire cord wire rod on July 17, 2002. The Rubber Manufacturers Association (the RMA), Ispat Germany, Lincoln Electric and Bluff City filed rebuttals to Petitioners' June 28 submission on July 8, 11, 17, and 29, 2002, respectively. The RMA filed additional comments on July 30, 2002.[1]

The Department has analyzed these requests and the Petitioners' objections and we find no modifications to the scope are warranted. *See* Memorandum from Richard Weible to Faryar Shirzad, ''Carbon and Certain Alloy Steel Wire Rod; Antidumping Duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine) and Countervailing Duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) Investigations: Requests for Scope Exclusion'' dated August 23, 2002, which is on file in room B–099 of the main Commerce building.

Period of Investigation

The POI is January 1, 2001, through June 30, 2001. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, August 2001).

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Krivorozhstal for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by Krivorozhstal. We made no changes from the *Preliminary Determination* as a result of verification. *See Analysis Memorandum for Krivorozhstal* (August 23, 2002) (''*Analysis Memorandum*'').

[1] On August 9, 2002, Bekaert Corporation requested an exclusion for certain high chrome/high silicon steel wire rod from the scope of these investigations. This request was filed too late to be considered for the final determinations in these investigations.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs to this investigation are addressed in the *Issues and Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, to Faryar Shirzad, Assistant Secretary* (August 23, 2002) (''*Decision Memorandum*''), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, and other issues addressed, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in the *Decision Memorandum*, a public memorandum which is on file at the U.S. Department of Commerce, in the Central Records Unit, in room B–099. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made adjustments to the calculation methodology in calculating the final dumping margin in this proceeding. *See Analysis Memorandum.*

Critical Circumstances

On December 5, 2001, Petitioners alleged that there that there was a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of wire rod from Brazil, Germany, Mexico, Moldova, Turkey, and Ukraine.[2] On February 4, 2002, the Department preliminarily determined that critical circumstances exist with respect to wire rod from Ukraine. *See Memorandum to Faryar Shirzad Re: Antidumping Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from Ukraine—Preliminary Affirmative Determination of Critical Circumstances* (February 4, 2002); *See also Carbon and Alloy Wire Rod from Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Notice of Preliminary Determination of Critical Circumstances,* 67 FR 6224 (February 11, 2002) (''*Critical Circumstances Notice*'').

In the Department's *Preliminary Determination*, we determined that critical circumstances exist for imports of carbon and certain alloy steel wire rod from Ukraine manufactured and/or exported by Krivorozhstal. Neither Petitioners nor Krivorozhstal provided comments on this issue in their briefs. Therefore, for this final determination, we continue to find critical circumstances for imports of carbon and certain alloy steel wire rod from Ukraine manufactured and/or exported by Krivorozhstal.

Non-Market Economy Country

The Department has treated Ukraine as a nonmarket economy (''NME'') country in all past antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Solid Agricultural Grade Ammonium Nitrate from Ukraine,* 66 FR 38632 (July, 25, 2001), (''*Ammonium Nitrate from Ukraine*''); *Notice of Preliminary Determinations of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Poland, Indonesia, and Ukraine,* 66 FR 8343 (January 30, 2001); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine,* 62 FR 61754 (November 19, 1997) (''*CTL Plate from Ukraine*''). This NME designation remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act). As explained in the ''Case History'' section, on October 17, 2001, the GOU submitted a request for, and information in support of, graduation to market economy status for Ukraine. The Department has decided to defer this decision in order to evaluate the broad range of issues and information regarding Ukraine's economic reforms and request for market economy status. *See Notice to Defer a Decision Regarding Ukraine's Non-Market Economy Status,* 67 FR 51536 (August 8, 2002) (''*Ukraine's Non-Market Status*''). As explained further in *Ukraine's Non-Market Status*, since a country's NME status remains in effect until revoked, we have continued to treat Ukraine as an NME country for purposes of the final determination.

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base the normal value (''NV'') on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the ''Normal Value'' section of the *Preliminary Determination,* the preliminary *Analysis Memorandum,* or the *Analysis Memorandum.*

Separate Rates

For the final determination, the Department will calculate a separate antidumping margin for Krivorozhstal, based on its ability to demonstrate an absence of government control of Respondent's export functions. For a complete discussion of this issue, see *Decision Memorandum,* comment 3.

Ukraine-Wide Rate

As discussed in our *Preliminary Determination,* the Ukraine-wide rate is the calculated margin for Krivorozhstal, the sole exporter. *See* ''Ukraine-Wide Rate'' section of our *Preliminary Determination.* There has been no other evidence submitted since the *Preliminary Determination* to change this determination. Accordingly, we have calculated a Ukraine-wide rate for this investigation based on the weighted-average margin determined for Krivorozhstal. This Ukraine-wide rate applies to all entries of subject merchandise.

Suspension Agreement

As discussed above under ''Case History,'' on April 17, and April 18, 2002, respectively, the GOU submitted a request and proposal for a suspension agreement in accordance with the Department's regulations at 19 C.F.R. 351.208. On April 24, 2002, the GOU submitted a request to discuss its proposed suspension agreement. No agreement was concluded.

Fair Value Comparisons

To determine whether sales of wire rod from Ukraine were made in the United States at LTFV, we compared export price (''EP'') to NV, as described in the ''Export Price'' and ''Normal Value'' sections of the *Preliminary Determination.* In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Surrogate Country

For purposes of the final determination, we continue to find that Indonesia remains the appropriate primary surrogate country for Ukraine. For further discussion and analysis regarding the surrogate country selection for Ukraine, see the ''Surrogate Country'' section of our *Preliminary Determination.*

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Customs Service (''Customs'') to continue to suspend liquidation of all imports of subject merchandise entered, or withdrawn from warehouse, for

[2] On December 21, 2001 Petitioners further alleged that there was a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of wire rod from Trinidad and Tobago.

consumption on or after the date of publication of the *Preliminary Determination* in the **Federal Register**. We will instruct Customs to continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margin is as follows:

Exporter/manufacturer	Weighted-average margin (in percent)
Krivorozhstal	116.37

Disclosure

The Department will disclose calculations performed, within five days of the date of publication of this notice, to the parties in this investigation, in accordance with section 351.224(b) of the Department's regulations.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our affirmative determination of sales at LTFV. As our final determination is affirmative, the ITC will determine within 45 days after our final determination whether imports of wire rod from Ukraine are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information discussed under APO in accordance with 19 C.F.R. 351.305. Timely notification of return/destruction of APO materials or conversion to judicial order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: August 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I

Comment 1: Whether the Department Should Use Domestic Indonesian Surrogate Values When Valuing Certain Factors of Production

Comment 2: Whether the Department Should Use the Surrogate Value for Tap Water Submitted by Krivorozhstal

Comment 3: Whether Krivorozhstal is Entitled to a Separate Dumping Margin

Comment 4: Whether the Department Should Value Factors Used to Mine Iron Ore

Comment 5: Whether Krivorozhstal Should Receive Full Credit for All Byproducts

[FR Doc. 02–22247 Filed 8–29–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–274–804]

Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Trinidad and Tobago

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 30, 2002.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Tisha Loeper-Viti at (202) 482–4162 or (202) 482–7425, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (2001).

Final Determination

We determine that carbon and certain alloy steel wire rod from Trinidad and Tobago is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the Continuation of Suspension of Liquidation section of this notice.

Case History

The preliminary determination in this investigation was issued on April 2, 2002. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago, 67 FR 17379 (April 10, 2002) (Preliminary Determination).* Since the publication of the preliminary determination, the following events have occurred:

In April and May 2002, the Department verified the responses submitted by the sole respondent in this investigation, Caribbean Ispat Limited and its affiliates Ispat North America Inc. and Walker Wire (Ispat) Inc. (collectively Carribean Ispat Ltd.). Verification reports were issued in May and June 2002. On June 28, 2002, we received case briefs from the petitioners [1] and the respondent. On July 3, 2002, we received rebuttal briefs from the petitioners and the respondent. A public hearing was held on July 9, 2002.

Scope Issues

Since the *Preliminary Determination* a number of parties have filed requests asking the Department to exclude various products from the scope of the concurrent antidumping duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations. On May 6, 2002, Ispat Hamburger Stahlwerke GmbH and Ispat Walzdraht Hochfeld GmbH (collectively, Ispat Germany) requested an exclusion for ''super clean valve spring wire.'' Two parties filed additional exclusion requests on June 14, 2002: Bluff City Steel asked that the Department exclude ''clean-steel precision bar,'' and Lincoln Electric Company sought the exclusion of its EW 2512 grade of metal inert gas welding wire. On June 28, 2002, the petitioners filed objections to a range of scope exclusion requests including: (i) Bluff City Steel's request for clean precision bar; (ii) Lincoln Electric Company's request for EW 2512 grade wire rod; (iii) Ispat Germany's request for ''super clean valve spring wire;'' (iv) Tokusen USA's January 22, 2002 request for 1070 grade tire cord and tire bead quality wire rod (tire cord wire rod); and (v) various parties' request for 1090 grade tire cord wire rod.

[1] The petitioners in this investigation are Co-Steel Raritan, Inc., GS Industries, Inc., Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.

In addition, Moldova Steel Works requested the exclusion of various grades of tire cord wire rod on July 17, 2002. The Rubber Manufacturers Association (the RMA), Ispat Germany, Lincoln Electric and Bluff City filed rebuttals to the petitioners' June 28, 2002, submission on July 8, 11, 17, and 29, 2002, respectively. The RMA filed additional comments on July 30, 2002.[2]

The Department has analyzed these requests and the petitioners' objections and we find no modifications to the scope are warranted. See Memorandum from Richard Weible to Faryar Shirzad, ''Carbon and Certain Alloy Steel Wire Rod; Antidumping Duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine) and Countervailing Duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) Investigations: Requests for Scope Exclusion'' dated August 23, 2002, which is on file in room B–099 of the main Commerce building.

Scope of Investigation

The merchandise covered by this investigation is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should the petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, August 2001).

Verification

As provided in section 782(i) of the Act, we conducted verification of the cost and sales information submitted by the respondent. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping proceeding are listed in the appendix to this notice and addressed in the *Decision Memorandum* dated August 23, 2002, and are hereby adopted by this notice. The *Decision Memorandum* is on file in room B–099 of the main Department of Commerce building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the World Wide Web at *www.ita.doc.gov/import_admin/records/frn.* The paper and electronic versions of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Determinations

Based on our findings at verification, and analysis of comments received, we have made adjustments to the preliminary determination in calculating the final dumping margin in this proceeding. In addition, we have made a final determination that critical

[2] On August 9, 2002, Bekaert Corporation requested an exclusion for certain high chrome/high silicon steel wire rod from the scope of these investigations. This request was filed too late to be considered for the final determinations in these investigations.

circumstances do not exist with regard to this case. The adjustments to the dumping margin, as well as a detailed description of the critical circumstances analysis, are discussed in the *Decision Memorandum* for this investigation.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of steel wire rod exported from Trinidad and Tobago that are entered, or withdrawn from warehouse, for consumption on or after the date of the preliminary determination. The Customs Service shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

Furthermore, because the Department now determines that critical circumstances do not exist, the suspension of liquidation for all shipments that entered or were withdrawn from warehouse, for consumption prior to April 10, 2002, is terminated. We are directing the Customs Service to refund any cash deposits and release any bonds or other security relating to such shipments.

We determine that the following weighted-average dumping margins exist for Trinidad and Tobago:

Manufacturer/exporter	Margin (percent)
Caribbean Ispat Ltd	11.40
All Others	11.40

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine, within 45 days, whether imports of subject merchandise from Trinidad and Tobago are causing material injury, or threaten material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs Service officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: August 23, 2002.

Faryar Shizad,

Assistant Secretary for Import Administration.

Appendix

Issues Covered in Decision Memorandum

I. Issues Specific to Sales

Comment 1: Sales of Non-Prime Merchandise
Comment 2: 201 Duties
Comment 3: Critical Circumstances
Comment 4: Minor Corrections (Sales Verification)

II. Issues Specific to Costs

Comment 5: Depreciation on Revalued Assets
Comment 6: Iron Ore Offset
Comment 7: General and Administrative Assets Depreciation

[FR Doc. 02–22248 Filed 8–29–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–841–805]

Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Moldova

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 30, 2002.

SUMMARY: We determine that carbon and certain alloy steel wire rod (wire rod) from Moldova is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margin of sales at LTFV is shown in the *Final Determination of Investigation* section of this notice.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Scott Lindsay at (202) 482–4236 or (202) 482–0780, respectively, AD/CVD Enforcement, Office 7, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations are references to the provisions of the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations are to 19 CFR part 351 (2001).

Case History

On April 10, 2002, the Department published the preliminary determination of the antidumping investigation of wire rod from Moldova. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Moldova,* 67 FR 17401 (April 10, 2002) (*Preliminary Determination*). We gave interested parties an opportunity to comment on our *Preliminary Determination*. On April 12, 2002, MSW informed the Department that it would not participate in verification. On April 27, 2002, MSW requested the Department postpone the final determination in accordance with section 735(a)(2)(A) of the Tariff Act. MSW also requested that the Department extend to six months any provisional measures imposed pursuant to section 733(d) of the Tariff Act. On May 13, 2002, we postponed the final determination of these proceedings. *See Postponement of Final Antidumping Duty Determinations; Carbon and Certain Alloy Steel Wire Rod from Germany, Indonesia and Moldova,* 67 FR 32013 (May 13, 2002). On June 17, 2002, Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (petitioners) and MSW submitted timely case briefs. On June 24, 2002, the petitioners submitted a rebuttal brief. The Department did not receive any requests for a public hearing.

Scope Issues

Since the *Preliminary Determination*, a number of parties have filed requests asking the Department to exclude various products from the scope of the concurrent antidumping duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago and Ukraine) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations. On May 6, 2002, Ispat Hamburger Stahlwerke GmbH and Ispat Walzdraht

Hochfeld GmbH (collectively, Ispat Germany) requested an exclusion for ''super clean valve spring wire.'' Two parties filed additional exclusion requests on June 14, 2002: Bluff City Steel asked that the Department exclude ''clean-steel precision bar,'' and Lincoln Electric Company sought the exclusion of its EW 2512 grade of metal inert gas welding wire. On June 28, 2002, petitioners (Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.) filed objections to a range of scope exclusion requests including: (i) Bluff City Steel's request for clean precision bar; (ii) Lincoln Electric Company's request for EW 2512 grade wire rod; (iii) Ispat Germany's request for ''super clean valve spring wire;'' (iv) Tokusen USA's January 22, 2002 request for 1070 grade tire cord and tire bead quality wire rod (tire cord wire rod); and (v) various parties' request for 1090 grade tire cord wire rod.

In addition, Moldova Steel Works requested the exclusion of various grades of tire cord wire rod on July 17, 2002. The Rubber Manufacturers Association (the RMA), Ispat Germany, Lincoln Electric and Bluff City filed rebuttals to petitioners' June 28 submission on July 8, 11, 17, and 29, 2002, respectively. The RMA filed additional comments on July 30, 2002.[1]

The Department has analyzed these requests and the petitioners' objections and we find no modifications to the scope are warranted. *See* Memorandum from Richard Weible to Faryar Shirzad, ''Carbon and Certain Alloy Steel Wire Rod; Antidumping Duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine) and Countervailing Duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) Investigations: Requests for Scope Exclusion'' dated August 23, 2002, which is on file in room B–099 of the main Commerce building.

Scope of Investigation

The merchandise covered by these investigations is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 2001 through June 30, 2001. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition in accordance with 19 CFR 351.204(b).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the ''Issues and Decision Memorandum for the Antidumping Investigation of Carbon and Certain Alloy Steel Wire Rod from Moldova,'' dated August 23, 2002, (*Decision Memorandum*) which is hereby adopted by this notice. Parties

[1] On August 9, 2002, Bekaert Corporation requested an exclusion for certain high chrome/high silicon steel wire rod from the scope of these investigations. This request was filed too late to be considered for the final determinations in these investigations.

can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 (B–099) of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Non-Market Economy Status

The Department has treated Moldova as a non-market-economy (NME) country in all past antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Steel Reinforcing Bars from Moldova,* 66 FR 33525 (June 22, 2001). In accordance with section 771(18)(C)(i) of the Act, a country's NME status continues until the Department revokes it. MSW requested that the Department revoke Moldova's NME status. The Government of the Republic of Moldova (GORM), however, did not support the treatment of the entire country as a market economy pursuant to MSW's request. Therefore, in accordance with section 771(18) of the Act, we continue to consider the Republic of Moldova as an NME country. *See Decision Memorandum.*

Changes Since the Preliminary Determination

We have not made any adjustments to the calculation methodologies used in the *Preliminary Determination* in determining the final dumping margin in this proceeding.

Use of Facts Available

As noted above, MSW refused to participate in verification. Section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may draw an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. In light of MSW's refusal to participate in verification, we determine that MSW has failed to cooperate to the best of its ability and have applied adverse facts available to MSW. For a complete discussion of our analysis, see the *Decision Memorandum* and memorandum *Determination of Facts Available for Moldova Steel Works in Carbon and Certain Alloy Steel Wire Rod from Moldova,* dated August 23, 2002.

Critical Circumstances

On February 4, 2002, the Department preliminarily determined that critical circumstances exist with respect to wire rod from Moldova. *See Memorandum to Faryar Shirzad Re: Antidumping Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from Moldova—Preliminary Affirmative Determination of Critical Circumstances* (February 4, 2002); *See also Carbon and Alloy Wire Rod from Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Notice of Preliminary Determination of Critical Circumstances,* 67 FR 6224 (February 11, 2002). We received no comments from MSW or the petitioners regarding our preliminary finding that critical circumstances exist for imports of wire rod from Moldova. Therefore, we have not changed our determination and continue to find that critical circumstances exist for imports of wire rod from Moldova.

Final Determination of Investigation

We determine that the following weighted-average percentage margin exists for the period January 1, 2001 through June 30, 2001:

Exporter/manufacturer	Weighted-average margin (percentage)
Moldova-wide rate	369.10

The Moldova-wide rate applies to all entries of the subject merchandise from Moldova.

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct the U.S. Customs Service (Customs) to continue to suspend liquidation of all entries of wire rod from Moldova that are entered, or withdrawn from warehouse, for consumption on or after January 10, 2002 (90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**). Customs shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown above. The suspension of liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury or threatening material injury to an industry in the United States. If the ITC determines that material injury, or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: August 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

1. Use of Adverse Facts Available
2. Basis of Adverse Facts Available
3. Request for Revocation of NME Status
4. Market Economy Responses

[FR Doc. 02–22249 Filed 8–29–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–832]

Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 30, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher Smith or Victoria Schepker, at (202) 482–1442 or (202) 482–1756, respectively; Import Administration,

International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (2001).

Final Determination

We determine that carbon and certain alloy steel wire rod from Brazil is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the Continuation of Suspension of Liquidation section of this notice.

Case History

The preliminary determination in this investigation was issued on April 2, 2002. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil,* 67 FR 18165 (April 15, 2002) (*Preliminary Determination).* Since the publication of the preliminary determination, the following events have occurred:

On April 16, 2002, Companhia Siderúrgica Belgo Mineira and its fully-owned subsidiary, Belgo-Mineira Participação Indústria e Comércio S.A. (BMP), collectively Belgo Mineira submitted a letter to the Department stating its intent to withdraw from the proceeding and requesting the return of its proprietary information. On April 25, 2002, the Department confirmed that all of Belgo Mineira's information had been withdrawn from the record and that all copies had been destroyed. The Department also sent a letter to the petitioners requesting that they return Belgo Mineira's information under the terms of the Administrative Protective Order (APO). The petitioners [1] objected to the return of Belgo Mineira's information in a letter dated April 26, 2002. Subsequently, the petitioners filed an appeal with the Court of International Trade (CIT), requesting that the Department not be allowed to require the petitioners to return Belgo Mineira's proprietary information. On May 9, 2002, the CIT ordered that the petitioners return the information to the Department, and that the Department keep the information under seal. On June 4, 2002, we received a case brief from the petitioners; on June 11, 2002, we received a rebuttal brief from Belgo Mineira. On June 24, and June 21, 2002, respectively, the parties filed revised briefs at the request of the Department.

Scope Issues

Since the *Preliminary Determination* a number of parties have filed requests asking the Department to exclude various products from the scope of the concurrent antidumping duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago and Ukraine) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations. On May 6, 2002, Ispat Hamburger Stahlwerke GmbH and Ispat Walzdraht Hochfeld GmbH (collectively, Ispat Germany) requested an exclusion for ''super clean valve spring wire.'' Two parties filed additional exclusion requests on June 14, 2002: Bluff City Steel asked that the Department exclude ''clean-steel precision bar,'' and Lincoln Electric Company sought the exclusion of its EW 2512 grade of metal inert gas welding wire. On June 28, 2002, the petitioners filed objections to a range of scope exclusion requests including: (i) Bluff City Steel's request for clean precision bar; (ii) Lincoln Electric Company's request for EW 2512 grade wire rod; (iii) Ispat Germany's request for ''super clean valve spring wire;'' (iv) Tokusen USA's January 22, 2002 request for 1070 grade tire cord and tire bead quality wire rod (tire cord wire rod); and (v) various parties' request for 1090 grade tire cord wire rod.

In addition, Moldova Steel Works requested the exclusion of various grades of tire cord wire rod on July 17, 2002. The Rubber Manufacturers Association (the RMA), Ispat Germany, Lincoln Electric and Bluff City filed rebuttals to the petitioners' June 28, 2002 submission on July 8, 11, 17, and 29, 2002, respectively. The RMA filed additional comments on July 30, 2002.[2]

The Department has analyzed these requests and the petitioners' objections and we find no modifications to the scope are warranted. See Memorandum from Richard Weible to Faryar Shirzad, ''Carbon and Certain Alloy Steel Wire Rod; Antidumping Duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine) and Countervailing Duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) Investigations: Requests for Scope Exclusion'' dated August 23, 2002, which is on file in room B–099 of the main Commerce building.

Scope of Investigation

The merchandise covered by this investigation is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in

[1] The petitioners in this investigation are Co-Steel Raritan, Inc., GS Industries, Inc., Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.

[2] On August 9, 2002, Bekaert Corporation requested an exclusion for certain high chrome/high silicon steel wire rod from the scope of these investigations. This request was filed too late to be considered for the final determinations in these investigations.

cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, August 2001).

Analysis of Comments Received

Given that there was only one issue raised in the parties' briefs, regarding the use of adverse facts available, we have addressed the issue here, and not in a separate Decision Memorandum.

Use of Facts Available

As stated above, Belgo Mineira withdrew from this proceeding and requested the return of all proprietary information submitted. Consequently, for the final determination, the Department has applied adverse facts available (AFA) by using the margin derived from the petition.

1. Application of Facts Available (FA)

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On April 16, 2002, Belgo Mineira notified the Department that it did not intend to participate further in the Department's investigation and requested the return of all of its data. Belgo Mineira was notified by the Department in all of our correspondence, concerning the due dates for submitting data, that failure to submit the requested information by the date specified may result in use of the FA, as required by section 776(c) of the Act and section 351.308 of the Department's regulations. *See* letters from the Department to Belgo Mineira dated November 9, 2001; December 27, 2001; and January 18, 2002.

As described above, Belgo Mineira withdrew its response to the Department's questionnaire. Because Belgo Mineira withheld information requested by the Department essential to the calculation of dumping margins, pursuant to section 776(a)(2) of the Act, we have applied FA to calculate the dumping margin.

2. Selection of AFA

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 62 FR 53808, 53819–20 (October 16, 1997); *Notice of Final Determination of Sales at Less than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Sweden,* 67 FR 47522, 47523 (July 19, 2002).

Comment: Application of AFA

The petitioners argue that Belgo Mineira's decision to cease participating in the investigation compels the Department to make an adverse inference when determining the final dumping margin. Further, the petitioners contend that, since Belgo Mineira should not be rewarded for its decision to withdraw its information from the record of the proceeding, the Department should place Belgo Mineira's information back on the record and use the highest calculated rate as its cash deposit rate.

Under section 776(b)(4) of the Act the Department may rely on ''any other information placed on the record'' for the purposes of deriving a facts available rate. The petitioners maintain that it is appropriate, under this provision, to use the information that Belgo Mineira submitted, which the Department still retains, albeit under seal. The petitioners point out that the information submitted by Belgo Mineira is ''primary'' information, the accuracy of which has been certified by Belgo Mineira and its counsel. Therefore, the petitioners argue, the Department is not obliged to corroborate this information. Further, the petitioners contend that the Department has relied on unverified, company-specific information in selecting a margin incorporating an adverse inference for respondents which withdrew from the investigation. *See,*

e.g., Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada, 64 FR 56739 (October 21, 1999) *(Live Cattle from Canada).*

While Belgo Mineira's information is currently under seal, the petitioners argue that the decision by the CIT in *Co-Steel Raritan, et al.* v. *United States,* Court No. 02–00313 (May 9, 2002) (*Co-Steel Raritan*) contemplates the use of Belgo Mineira's information in selecting a final deposit rate that incorporates an adverse inference. Specifically, the petitioners argue that the CIT's order provides that unless the Department assigns to Belgo Mineira a deposit rate that is no less favorable to the petitioners than the result it could have reached using Belgo Mineira's information, the Department will be required to remove the information from under seal and return it to the petitioners counsel to provide them with an opportunity to submit objections.

Further, the petitioners argue that in *Live Cattle from Canada,* the Department found that ''there is no statutory provision dealing with the withdrawal of business proprietary information once it has been submitted {and} the courts have recognized the inherent power of an administrative authority to protect the integrity of its proceedings.'' *See Live Cattle from Canada* at 56743.

Therefore, according to the petitioners, there is nothing in the statute or judicial precedent to preclude the Department from placing Belgo Mineira's information, which is currently under seal, back on the record of the proceeding. The petitioners maintain that, by withdrawing its information, Belgo Mineira is attempting to manipulate the proceeding and receive a lower adverse facts available rate than it would have received had it left its information on the record. Therefore, the petitioners ask that Belgo Mineira's information be put back on the record and that Belgo Mineira be given the highest margin calculated from that information.

Belgo Mineira states that its decision to cease participating in the case was a business decision based on a cost/benefit analysis, which lead to the conclusion that the cost of participating in the investigation outweighed the possible benefits of doing so, given the Department's decision to exclude a significant portion of Belgo Mineira's exports from the scope of the proceeding. Belgo Mineira acknowledges that when it withdrew, it was with the knowledge that the Department may select an adverse facts available rate in the final determination, which was higher than its calculated rate.

Further, Belgo Mineira argues that, should the Department remove its information from under seal, it would be in violation of the court order in *Co-Steel Raritan,* which directed the Department to place the information under seal and then proceed with the investigation. Belgo Mineira maintains that the CIT contemplated removing the documents from under seal only if there is a subsequent action by the petitioners before the CIT, and the CIT directs the Department to unseal the information.

In addition, Belgo Mineira points out the Department has well established practices for assigning a facts available rate to mandatory respondents who do not participate fully in the proceeding. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From Brazil,* 64 FR 14863 (March 29, 1999) (*ESBR from Brazil*). According to Belgo Mineira, whether it opted not to participate from the beginning, or elected to withdraw in the middle, should not be relevant to the Department's final determination. Therefore, Belgo Mineira believes that the Department should follow its usual policy in assigning a facts available rate and should not be influenced by the petitioners speculation on Belgo Mineira's motives for withdrawing from the proceeding.

Finally, Belgo Mineira suggests that, if the Department does remove Belgo Mineira's information from under seal, and decides that the information is sufficiently reliable to use for the purposes of establishing a facts available rate, the Department should use all of that information, not just the highest calculated margin to establish the cash-deposit rate.

Department's Position

We agree with the petitioners that Belgo Mineira's decision to cease participating in the proceeding warrants the application of adverse facts available under section 776(b) of the Act. By ceasing to participate and withdrawing its information, Belgo Mineira failed to cooperate to the best of its ability. However, we disagree that Belgo Mineira's information should be removed from under seal and used to establish the adverse facts available rate.

As a general matter, it is reasonable for the Department to assume that Belgo Mineira possessed the records necessary for the Department to complete its investigation since it provided a nearly complete response before withdrawing it from the record. Therefore, by withdrawing the information the Department requested, Belgo Mineira failed to cooperate to the best of its ability. As Belgo Mineira failed to cooperate to the best of its ability, we are applying an adverse inference pursuant to section 776(b) of the Act. As AFA, we have used 94.73 percent, the rate derived from the petition. *See Initiation of Antidumping Duty Investigations: Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela,* 66 FR 50164 (October 2, 2001) (Initiation Notice).

The Department has allowed withdrawing parties, who make a request, to remove their business proprietary information from the administrative record of an ongoing proceeding.[3] Thus, the Department's decision to remove Belgo Mineira's

[3] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Sweden,* 67 FR 47522, 47523 (July 19, 2002); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Australia,* 67 FR 47509, 47510 (July 19, 2002); *Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review,* 66 FR 56272, 56273 (Nov. 7, 2001); *Preliminary Determination of Sales at Less Than Fair Value: Honey From Argentina,* 66 FR 24108, 24110–11 (May 11, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan,* 65 FR 42985, 42986 (July 12, 2000); *Carbon Steel Wire Rope from Mexico: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review, and Determination Not To Revoke the Antidumping Order in Part,* 65 FR 18283, 18284 (April 7, 2000). *See also Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From Brazil,* 59 FR 55432, 55433 Comment 1 (Nov. 9, 1994); *Final Determination of Sales At Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Italy,* 58 FR 37152, 37152–153 (July 9, 1993); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina,* 58 FR 37062 (July 9, 1993); *Notice of Preliminary Determination of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products From Japan,* 58 FR 7103, 7104, 7105 (Feb. 4, 1993); *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From France,* 58 FR 6203, 6204–6205 (January 27, 1993); *Final Determination of Sales at Less Than Fair Value: Personal Word Processors from Japan,* 56 FR 31101 (July 9, 1991)(Rate was modified using the petition and public data, pursuant to *Smith Corona Corp.* v. *United States,* 802 F. Supp. 467, 468 (Ct. Int'l Trade 1992)); *Preliminary Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof From Japan,* 54 FR 31978 (Aug. 3, 1989); *Final Affirmative Countervailing Duty Determination: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Israel,* 54 FR 15509 (April 18, 1989)(Both the government of Israel and the foreign producer withdrew their responses).

business proprietary documents from the record in this administrative review was consistent with the Department's practice. We find the petitioners' reliance on *Live Cattle from Canada* to be misplaced. That case involved a unique circumstance in that the Department found that the ''All Others'' rate, which would have been applied to the majority of exports of the subject merchandise, would have been distorted by the withdrawal of information by one of the mandatory respondents. In *Live Cattle from Canada,* the Department did not state that it was changing its practice, but that the peculiarities of that case meant that the Department should not follow its normal practice. *Live Cattle from Canada,* 64 FR at 56743–44. The Department's decision in *Live Cattle from Canada* is limited to the unique set of facts underlying that determination and does not establish ''precedent'' for the agency. No such circumstance exists in this case. The only producer affected by the withdrawal of Belgo Mineira's information is Belgo Mineira itself.

Further, with regard to Belgo Mineira's information, we disagree with the petitioners' interpretation of the CIT's order. The CIT ordered that the Department was to ''safekeep this information under seal pending Commerce's issuance of the final determination.'' *See Co-Steel Raritan* at 2. The Court further ordered that the petitioners can enter their objections ''for Commerce's consideration in accordance with pertinent statutory and regulatory provisions;'' moreover, for petitioners to obtain access to the proprietary information, they should bring a separate action before the CIT. *Co-Steel Raritan* at 13–14. The Department maintains the information under seal, because the Department interprets section 777(b)(1)(A) of the Act to mean that once a respondent has withdrawn its consent for Administrative Protective Order (APO) parties and the government to review its business proprietary information, then the Department must remove it from the record and cannot disclose the information. See section 777(b)(1)(A) of the Act (''information submitted to the administering authority* * * which is designated as proprietary by the person submitting the information shall not be disclosed to any person without the consent of the person submitting the information* * *.''). The Department's interpretation is supported by the fact that participation in the administrative process by foreign governments and its commercial citizens is voluntary, and the Department lacks subpoena powers. *See Rhone Poulenc Inc.* v. *United States,* 899 F.2d 1185, 1191 (Fed. Cir. 1990). Therefore, to remain in compliance with the CIT order and the Act, the information in question may not be removed from under seal until there is a separate court order after the final determination. Furthermore, the Department is required to apply a rate that is supported by information on the record. *Smith Corona Corp.* v. *United States,* 796 F. Supp. 1532, 1537 (CIT 1992)(*Smith Corona I*); *Smith Corona Corp.* v. *United States,* 802 F. Supp. 467, 468 (CIT 1992)(*Smith Corona II*). A rate derived from Belgo Mineira's information cannot be supported because that information is no longer on the administrative record.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (Feb. 23, 1998). The Department applies adverse facts available ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103–316, vol. 1, at 870 (1994)(SAA). The Department also considers the extent to which a party may benefit from its own lack of cooperation in selecting a rate. *See Roller Chain, Other than Bicycle, from Japan; Notice of Final Results and Partial Recision of Antidumping Duty Administrative Review*, 62 FR 60472, 60477 (Nov. 10, 1997), SAA at 870. In this case, the highest margin derived from the petition is 94.73 percent, higher than Belgo Mineira's preliminary calculated margin of 65.76 percent.

We believe that the highest margin derived from the petition is sufficiently adverse, and cannot be considered beneficial to Belgo Mineira. Consistent with long-standing Department practice, we have assigned this margin to Belgo Mineira in the final determination. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Venezuela,* 63 FR 8946, 8948 (February 23, 1998); *see also, Final Determination of Sales at Less Than Fair Value: Vector Supercomputers From Japan*, 62 FR 45623 (August 28, 1997).

3. Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* SAA at 870.

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*see* the *Initiation Checklist*, dated September 24, 2002, (*Initiation Checklist*) on file in the CRU for a discussion of the margin calculation in the petition). In addition, in order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculation in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margins in the petition were based. After making adjustments to the elements of EP and NV (*see Initiation Checklist*), we determined that the evidence supporting the calculation in the petition was adequate and the petition margin is appropriate for use as AFA in this determination.

All Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-averaged dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign, as the ''all others'' rate, the simple average of the margins in the petition. *See Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand*, 65 FR 5520, 5527–28 (February 4, 2000); *see also Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Canada (Stainless Steel Plate from Canada*), 64 FR 15457 (March 31, 1999); and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Italy (Stainless Steel Plate from Italy*), 64 FR 15458, 15459 (March 31, 1999). Consistent with our practice, we have assigned to all other manufacturers/exporters the simple average of the margins in the petition, which is 74.35 percent.

Critical Circumstances

Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

In the preliminary determination, the Department found that critical circumstances do not exist because imports had not been massive over a ''relatively short period of time,'' pursuant to 733(e)(1)(B) of the Act. *See Preliminary Determination* at 18171; *see also, Antidumping Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from Brazil—Preliminary Negative Determination of Critical Circumstances Memorandum* from Bernard T. Carreau to Faryar Shirzad, April 2, 2002 (*Critical Circumstances Memorandum*) on file in the CRU.

In that decision, we used Belgo Mineira's company-specific information to arrive at a negative critical circumstances preliminary determination with regard to that company, based on our determination that imports had not been massive over a relatively short period. Because Belgo Mineira withdrew its information, the company-specific shipment data were no longer on the record for this final determination. However, we were aware that the Department had requested company-specific shipment data from Belgo and the other major exporter/producer, Gerdau S.A. (Gerdau), in the companion countervailing duty investigation.[4] On August 20, 2002, we requested that Belgo Mineira and Gerdau submit their shipment data for our critical circumstances determination in this case. As in the *Preliminary Determination*, our analysis of Belgo Mineira's shipment data indicates that imports have decreased during the comparison period; therefore, we find that the criterion under section 733(e)(1)(B) of the Act has not been met, *i.e.*, there have not been massive imports of steel wire rod from Belgo Mineira over a relatively short time.[5] Because there have not been massive imports in this case, we have determined that it is unnecessary to address the other prong of the critical circumstances test. For this reason, we determine that critical circumstances do not exist for imports of steel wire rod produced by Belgo Mineira.

Regarding the ''All Others'' category, although the mandatory respondent did not have massive imports, we also considered the combined shipment data of the two largest Brazilian exporters of wire rod. Based on our respondent selection analysis, we determined that there were two significant exporters of subject merchandise during the POI, Belgo Mineira and Gerdau S.A (Gerdau). *See Respondent Selection Memorandum* to Gary Taverman from Vicki Schepker, dated November 9, 2001. Information used for the respondent selection indicates that merchandise produced by Gerdau constitutes the preponderance of merchandise in the ''All Others'' category. Therefore, we are using the combined experience of Belgo Mineira and Gerdau for our critical circumstances determination for the ''All Others'' category of producers. Our review of the combined shipment data indicates that imports have decreased during the comparison period. Accordingly, pursuant to section 733(e) of the Act and section 351.206(h) of the Department's regulations, we preliminarily find that critical circumstances do not exist for imports of steel wire rod produced by the ''All Others'' category.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of steel wire rod exported from Brazil, that are entered, or withdrawn from warehouse, for consumption on or after the date of the preliminary determination. The Customs Service shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown below. We will adjust the deposit requirements to account for any export subsidies found in the companion countervailing duty investigation. The suspension of liquidation instructions will remain in effect until further notice.

We determine that the following weighted-average dumping margins exist for Brazil:

Manufacturer/exporter	Margin (percent)
Companhia Siderúrgica Belgo Mineira and Belgo-Mineira Participação Indústria e Comércio S.A. (BMP)	94.73
All Others	74.45

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine, within 45 days, whether imports of subject merchandise from Brazil are causing material injury, or threaten material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs Service officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or

[4] We note that these data were verified in the companion countervailing duty investigation.

[5] *See Carbon and Certain Alloy Steel Wire Rod from Brazil: Analysis of Shipment Data for Critical Circumstances Determination Memorandum* from Vicki Schepker to Constance Handley, August 23, 2002, on file in the CRU.

after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: August 23, 2002.

Faryar Shizad,

Assistant Secretary for Import Administration.

[FR Doc. 02–22250 Filed 8–29–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–815]

Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 30, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier, James Balog, or Abdelali Elouaradia at (202) 482–1394, (202) 482–6349, or (202) 482–1374 respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (2001).

Final Determination

We determine that carbon and certain alloy steel wire rod from Indonesia is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

We published in the **Federal Register** the preliminary determination in this investigation on April 10, 2002. *See Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Indonesia,* 67 FR 17374 (April 10, 2002) (Preliminary Determination). Since the publication of the Preliminary Determination the following events have occurred. On April 11, 2002, petitioners requested that the Department extend the deadline for issuance of the final determination by the full 60 days. On May 13, 2002, the Department extended the deadline for the final determination to August 23, 2002. *See Postponement of Final Antidumping Duty Determinations; Carbon and Certain Alloy Steel Wire Rod from Germany, Indonesia, and Moldova,* 67 FR 32013 (May 13, 2002).

The Department verified section A–C of Ispat Indo's responses from April 16, 2002, to April 19, 2002, at Ispat Indo's facilities in Surabaya, Indonesia and at Ispat Indo's trading company on April 23, 2002, in Dubai, United Arab Emirates. The Department also verified section D of Ispat Indo's response from May 20, 2002, to May 24, 2002, at Ispat Indo's facilities. See Memorandum to the File; ''Verification of the questionnaire responses of P.T. Ispat Indo (''Ispat Indo'') in the antidumping duty investigation of carbon and certain alloy steel wire rod from Indonesia,'' May 13, 2002 (Sales Verification Report) and Memorandum to Neal Halper, Director, Office of Accounting; ''Verification Report on the Cost of Production and Constructed Value,'' June 18, 2002 (Cost Verification Report). Public version of these and all other Departmental memoranda referred to herein are on file in the Central Records Unit, room B–099 of the main Commerce building.

Since the *Preliminary Determination* a number of parties have filed requests asking the Department to exclude various products from the scope of the concurrent antidumping duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago and Ukraine) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations. On May 6, 2002, Ispat Hamburger Stahlwerke GmbH and Ispat Walzdraht Hochfeld GmbH (collectively, Ispat Germany) requested an exclusion for ''super clean valve spring wire.'' Two parties filed additional exclusion requests on June 14, 2002: Bluff City Steel asked that the Department exclude ''clean-steel precision bar,'' and Lincoln Electric Company sought the exclusion of its EW 2512 grade of metal inert gas welding wire. On June 28, 2002, petitioners (Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.) filed objections to a range of scope exclusion requests including: (i) Bluff City Steel's request for clean precision bar; (ii) Lincoln Electric Company's request for EW 2512 grade wire rod; (iii) Ispat Germany's request for ''super clean valve spring wire;'' (iv) Tokusen USA's January 22, 2002 request for 1070 grade tire cord and tire bead quality wire rod (tire cord wire rod); and (v) various parties' request for 1090 grade tire cord wire rod.

In addition, Moldova Steel Works requested the exclusion of various grades of tire cord wire rod on July 17, 2002. The Rubber Manufacturers Association (the RMA), Ispat Germany, Lincoln Electric and Bluff City filed rebuttals to petitioners' June 28 submission on July 8, 11, 17, and 29, 2002, respectively. The RMA filed additional comments on July 30, 2002.[1]

The Department has analyzed these requests and the petitioners' objections and we find no modifications to the scope are warranted. See Memorandum from Richard Weible to Faryar Shirzad, ''Carbon and Certain Alloy Steel Wire Rod; Antidumping Duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine) and Countervailing Duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) Investigations: Requests for Scope Exclusion'' dated August 23, 2002, which is on file in room B–099 of the main Commerce building.

On July 2, 2002, the Department received case briefs from Ispat Indo and petitioners. On July 12, 2002, the Department received rebuttal briefs from Ispat Indo and petitioners.

Period of Investigation

The POI is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition (*i.e.*, August 2001), and is in accordance with section 351.204(b)(1) of the Department's regulations.

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[1] On August 9, 2002, Bekaert Corporation requested an exclusion for certain high chrome/high silicon steel wire rod from the scope of these investigations. This request was filed too late to be considered for the final determinations in these investigations.

Scope of Investigation

The merchandise covered by these investigations is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated August 23, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, on file in B–099.

In addition, a complete version of the Decision Memo can be accessed directly on the World Wide Web at *http://www.ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of comments received and findings at verification, we have made certain changes in the margin calculation. These changes are noted in various sections of the Decision Memo, accessible in B–099 and on the World Wide Web at *http://www.ia.ita.doc.gov/frn.*

Use of Facts Available

In accordance with section 776 of the Act, we have determined that the use of facts available is appropriate for certain portions of the our analysis of Ispat Indo. For a discussion of our determination with respect to these matters, *see* the Decision Memo.

Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we are instructing Customs to suspend liquidation of all entries of carbon and certain alloy steel wire rod from Indonesia that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the Final Determination. We determine that the following weighted-average dumping margin exists for the period July 1, 2000, through June 30, 2001:

Exporter/manufacturer	Margin (percent)
P.T. Ispat Indo	4.06%
All Others	4.06%

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an

industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs officials to assess antidumping duties on all imports on the subject merchandise entered, or withdrawn from warehouse for consumption on or after the date of publication in the **Federal Register** of the Final Determination. This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: August 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix 1.—Issues in Decision Memorandum

1. Bank Charges for U.S. Sales.
2. Payment Date for Home Market Sales and Interest Revenue.
3. Foreign Inland Freight for Certain U.S. Sales Sold Through IWP.
4. Date of Sale.
5. Exchange Losses Related to Loan to Affiliate.
6. Electricity Discounts.
7. Cost Allocation Associated with Special Surface Quality Product.

[FR Doc. 02–22251 Filed 8–29–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–830]

Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 30, 2002.

FOR FURTHER INFORMATION CONTACT: Marin Weaver or Charles Riggle at (202) 482–2336 or (202) 482–0650, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (2001).

Final Determination

We determine that carbon and certain alloy steel wire rod from Mexico is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the *Continuation of Suspension of Liquidation* section of this notice.

Case History

The preliminary determination in this investigation was issued on April 2, 2002. *See* Notice of Preliminary Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico, 67 FR 17397 (April 10, 2002) (Preliminary Determination). Since the publication of the preliminary determination, the following events have occurred:

The final determination for this investigation was postponed on April 17, 2002. *See* Notice of Postponement of Final Antidumping Duty Determination and Extension of Provisional Measures: Carbon and Certain Alloy Steel Wire Rod from Mexico, 67 FR 20728 (April 26, 2002). In April and May 2002, the Department verified the responses submitted by the respondent in this investigation, Siderurgica Lazaro Cardenas Las Truchas, S.A. de C.V. (SICARTSA) and its affiliates CCC Steel GmbH and Coutinho Caro + Co. USA Inc. Verification reports were issued in June 2002. On July 10, 2002, we received case briefs from the petitioners [1] and the respondent. On July 17, 2002, we received rebuttal briefs from the petitioners and the respondent. A public hearing was not held.

Scope Issues

Since the Preliminary Determination a number of parties have filed requests asking the Department to exclude various products from the scope of the concurrent antidumping duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations. On May 6, 2002, Ispat Hamburger Stahlwerke GmbH and Ispat Walzdraht Hochfeld GmbH (collectively, Ispat Germany) requested an exclusion for ''super clean valve spring wire.'' Two parties filed additional exclusion requests on June 14, 2002: Bluff City Steel asked that the Department exclude ''clean-steel precision bar,'' and Lincoln Electric Company sought the exclusion of its EW 2512 grade of metal inert gas welding wire. On June 28, 2002, the petitioners filed objections to a range of scope exclusion requests including: (i) Bluff City Steel's request for clean precision bar; (ii) Lincoln Electric Company's request for EW 2512 grade wire rod; (iii) Ispat Germany's request for ''super clean valve spring wire;'' (iv) Tokusen USA's January 22, 2002 request for 1070 grade tire cord and tire bead quality wire rod (tire cord wire rod); and (v) various parties' request for 1090 grade tire cord wire rod.

In addition, Moldova Steel Works requested the exclusion of various grades of tire cord wire rod on July 17, 2002. The Rubber Manufacturers Association (the RMA), Ispat Germany, Lincoln Electric and Bluff City filed rebuttals to the petitioners' June 28, 2002 submission on July 8, 11, 17, and 29, 2002, respectively. The RMA filed additional comments on July 30, 2002.[2]

The Department has analyzed these requests and the petitioners' objections and we find no modifications to the scope are warranted. *See* Memorandum from Richard Weible to Faryar Shirzad, ''Carbon and Certain Alloy Steel Wire Rod; Antidumping Duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine) and Countervailing Duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) Investigations: Requests for Scope Exclusion'' dated August 23, 2002, which is on file in room B–099 of the main Commerce building.

Scope of Investigation

The merchandise covered by this investigation is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining

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[1] The petitioners in this investigation are Co-Steel Raritan, Inc., GS Industries, Inc., Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.

[2] On August 9, 2002, Bekaert Corporation requested an exclusion for certain high chrome/high silicon steel wire rod from the scope of these investigations. This request was filed too late to be considered for the final determinations in these investigations.

steel products (*i.e.,* products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* August 2001).

Verification

As provided in section 782(i) of the Act, we conducted verification of the cost and sales information submitted by the respondent. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping proceeding are listed in the appendix to this notice and addressed in the *Decision Memorandum* dated August 23, 2002, and are hereby adopted by this notice. The *Decision Memorandum* is on file in room B–099 of the main Department of Commerce building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the World Wide Web at *http://www.ita.doc.gov/import_admin/records/frn.* The paper and electronic versions of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Determinations

Based on our findings at verification, and analysis of comments received, we have made adjustments to the preliminary determination in calculating the final dumping margin in this proceeding. In addition, we have made a final determination that critical circumstances do not exist with regard to this case. The adjustments to the dumping margin, as well as a detailed description of the critical circumstances analysis, are discussed in the *Decision Memorandum* for this investigation.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of steel wire rod exported from Mexico that are entered, or withdrawn from warehouse, for consumption on or after the date of the preliminary determination. The Customs Service shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

Furthermore, because the Department now determines that critical circumstances do not exist, the suspension of liquidation for all shipments that entered or were withdrawn from warehouse, for consumption prior to April 10, 2002, is terminated. We are directing the Customs Service to refund any cash deposits and release any bonds or other security relating to such shipments.

We determine that the following weighted-average dumping margins exist for Mexico:

Manufacturer/exporer	Margin (percent)
SICARTSA	20.11
All Others	20.11

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine, within 45 days, whether imports of subject merchandise from Mexico are causing material injury, or threaten material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs Service officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: August 23, 2002.

Faryar Shizad,

Assistant Secretary for Import Administration.

Appendix

Issues Covered in Decision Memorandum

I. Issues Specific to Sales

Comment 1: Constructed Export Price
Comment 2: Post-Sale Discounts
Comment 3: Credit Expense/Interest Rate
Comment 4: Customs Duties Adjustment
Comment 5: Critical Circumstances

B. Issues Specific to Costs

Comment 6: Initiation of Cost Investigation
Comment 7: G&A and Financial Expense Calculation Period
Comment 8: Financial Expense Ratio
Comment 9: Gains and Losses on Monetary Position
Comment 10: Prior Period Expenses
Comment 11: Exchange Gains on Accounts Payable
Comment 12: Extraordinary Costs
Comment 13: Major Inputs
Comment 14: Useful Lives of Fixed Assets
Comment 15: Loss on Physical Inventory
Comment 16: Liquid Steel Adjustment

[FR Doc. 02–22252 Filed 8–29–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–832]

Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 30, 2002.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian, or Robert James, at (202) 482–1131, or (202) 482–0649, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Tariff Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2001).

Final Determination

We determine carbon and certain alloy steel wire rod from Germany (wire rod) is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act. The estimated margins of sales at LTFV are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

Case History

On April 10, 2002, the Department published its preliminary determination in this investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Germany,* 67 FR at 17384 *(Preliminary Determination).* Since the April 2, 2002, signing of our *Preliminary Determination* the following events have occurred:

On April 4, 2002, the sole respondent, Saarstahl AG (Saarstahl) submitted a request that the Department postpone its final determination by fifty additional days; Saarstahl also agreed to the extension of provisional measures to a period not to exceed six months, as required by section 733(d) of the Tariff Act. Accordingly, on May 13, 2002, we published in the **Federal Register** our notice of postponement of the final determination. *See Postponement of Final Antidumping Duty Determinations; Carbon and Certain Alloy Steel Wire Rod from Germany, Indonesia and Moldova,* 67 FR at 32013 (May 13, 2002).

The Department verified Saarstahl's cost of production responses from May 27 through May 31, 2002. From June 13, 2002 to June 20, 2002, we verified Saarstahl's sales responses. We issued our cost verification report on June 21, 2002, with our sales verification report following on July 10, 2002.

Saarstahl submitted information on June 7, 2002, concerning monthly imports of subject steel wire rod for the period January through April 2002.

On June 24, 2002, petitioners and Saarstahl submitted case briefs. Both parties submitted rebuttal briefs on July 29, 2002. On August 5, 2002, the Department held a public hearing.

Period of Investigation

The period of investigation (POI) is July 1, 2000 through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition (*i.e.*, August 2001), and is in accordance with section 351.204(b)(1) of the Department's regulations.

Scope Issues

Since the *Preliminary Determination* a number of parties filed requests asking the Department to exclude various products from the scope of these investigations. On May 6, 2002, Ispat Hamburger Stahlwerke GmbH and Ispat Walzdraht Hochfeld GmbH (collectively, Ispat Germany) requested an exclusion for ''super clean valve spring wire.'' Two parties filed additional exclusion requests on June 14, 2002: Bluff City Steel asked that the Department exclude ''clean-steel precision bar,'' and Lincoln Electric Company sought the exclusion of its EW 2512 grade of metal inert gas welding wire. On June 28, 2002, petitioners (Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.) filed objections to a range of scope exclusion requests including: (i) Bluff City Steel's request for clean precision bar; (ii) Lincoln Electric Company's request for EW 2512 grade wire rod; (iii) Ispat

Germany's request for ''super clean valve spring wire;'' (iv) Tokusen USA's January 22, 2002 request for grade 1070 grade tire cord and tire bead quality wire rod (tire cord wire rod); and (v) various parties' request for 1090 grade tire cord wire rod.

In addition, Moldova Steel Works requested the exclusion of various grades of tire cord wire rod on July 17, 2002. The Rubber Manufacturers Association (the RMA), Ispat Germany, Lincoln Electric and Bluff City filed rebuttals to petitioners' June 28 submission on July 8, 11, 17, and 29, 2002, respectively. The RMA filed additional comments on July 30, 2002.[1]

The Department has analyzed these requests and the petitioners' objections and we find no modifications to the scope are warranted. *See* Memorandum from Richard Weible to Faryar Shirzad, ''Carbon and Certain Alloy Steel Wire Rod * * * Requests for Scope Exclusion'' dated August 23, 2002, which is on file in room B–099 of the main Commerce building.

Scope of the Investigation

The merchandise covered by these investigations is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Critical Circumstances

Section 735(a)(3) of the Tariff Act provides that if our final determination is affirmative, then the determination shall also contain a finding of whether (i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or the person by whom, or for whose account, the merchandise was imported, knew or should have known that the exporter was selling the subject merchandise at less that its fair value and that there would be material injury by reason of such sales, and (ii) there have been massive imports of the subject merchandise over a relatively short period.

On February 5, 2002, we preliminarily found that both criteria, *i.e.*, knowledge of dumping and material injury and massive imports of subject merchandise, had been met by Saarstahl and preliminarily found that critical circumstances exist. *See Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Notice of Preliminary Determination of Critical Circumstances,* 67 Fed. Reg. at 6224 (February 11, 2002).

We have concluded in this final determination that critical circumstance exist for imports of steel wire rod from Germany. *See* the Department's response to Comment 6 in the Issues and Decision Memorandum, dated August 23, 2002.

Use of Facts Available

Section 776(a)(2) of the Tariff Act provides that if any interested party: (A)

[1] On August 9, 2002, Bekaert Corporation requested an exclusion for certain high chrome/high silicon steel wire rod from the scope of these investigations. This request was filed too late to be considered for the final determinations in these investigations.

Withholds information that has been requested by the Department; (B) fails to provide such information by the deadlines for submission of the information or in the form or manner requested; (C) significantly impedes an antidumping investigation; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d), use the facts otherwise available in making its determination.

Section 782(d) of the Tariff Act requires the Department to ''promptly inform'' a respondent of the nature of any deficiencies found in its response and to ''provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations. * * *'' To the extent the respondent fails to address the deficiencies, and subject to section 782(e), the Department may disregard all or part of the response. Section 782(e) provides the Department shall not decline to consider information deemed deficient under section 782(d) if: (1) The information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information; and (5) the information can be used without undue difficulties.

We used facts available in the *Preliminary Determination* because we determined certain information was not available on the record, or was not provided by the deadline or in the form or manner requested. Specifically, Saarstahl failed to provide requested documentation, including worksheets and other documentation, to support its derivation of various reported expenses. Further, Saarstahl failed to provide information in the manner requested pertaining to certain expenses incurred on both its home market and U.S. sales. For example, contrary to our specific instructions, Saarstahl reported movement expenses based upon ''estimated freight expenses (*Fracht-Ruckstellung*) calculated at the time of sale for each invoice.'' Saarstahl's January 22, 2002, Section B response at B–21. This involved inland plant-to-warehouse and plant-to-customer freight, and warehousing expenses in the home market. For U.S. sales, the *Fracht-Ruckstellung* included foreign inland freight, freight to the port, ocean freight, inland and marine insurance, U.S. customs duties and, where applicable, warehousing expenses. Saarstahl failed to provide the requested actual expenses or supporting documentation (for example, tariff schedules or contracts demonstrating the freight rates in effect during the POI). Furthermore, Saarstahl has not explained fully its original allocations based upon the *Fracht-Ruckstellung*, or provided the Department the means of establishing independently the validity of the underlying estimates. (For further details of these deficiencies, see the ''Preliminary Analysis Memorandum,'' dated April 2, 2002.)

With regard to packing expenses, Saarstahl reported identical packing expenses, by mill, for both home market and U.S. sales, despite indications in its initial responses that sales for export require greater packing materials. Saarstahl also did not initially provide worksheets supporting the calculation of packing costs for two of the three mills producing subject wire rod products during the POI.

In accordance with section 776(a) of the Tariff Act, we have continued to use partial facts available in instances where Saarstahl failed to provide necessary information on its home market and U.S. freight expenses in the manner or form requested. As non-adverse facts available for U.S. sales, for the movement expenses at issue, we set these expenses to no less than the median value reported for each expense; similarly, for the home market, we set the movement expenses to no greater than the median value reported for each expenses. As to packing expenses, we have altered our methodology to reflect our finding at verification that there is apparently little significant differences in packing costs for export sales versus home market sales. For further details regarding our selection of facts available for freight and packing expenses, *see* Comments 7 and 8, and our Final Analysis Memorandum, dated concurrently with this notice. A public file of this and all documents generated by the Department can be found in our Central Records Unit, room B–099 in the main Commerce building.

In addition, we applied adverse facts available for certain unreported U.S. sales discovered at verification. Section 776(b) of the Tariff Act provides that adverse inferences may be used in selecting the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316, vol.1, at 870 (1994) (SAA). For additional details, *see also* Comment 2 of the Issues and Decision Memorandum, dated August 23, 2002.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Tariff Act.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Issues and Decision Memorandum, dated August 23, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we responded, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received, we have made certain changes to the calculations used in our preliminary results (see the Issues and Decision Memorandum comments for details):

We applied adverse facts available for unreported U.S. sales (see Comment 2).

We used a Euro interest rate for home market sales and for U.S. sales denominated in Euros (see Comment 3).

We used the last day of verification as a proxy for payment date for all unpaid sales in the home market and U.S. sales databases (see Comment 4)

We revised the credit period for all sales to one U.S. customer to account for split payments for one transaction reviewed at verification (see Comment 5).

We revised our application of facts available for packing expenses (see Comment 8).

We included in the U.S. sales database one sale of merchandise that Saarstahl had mischaracterized as tire cord wire rod outside of the scope of the investigation (see Comment 9).

In addition, we made several changes to our calculations to reflect other developments in the proceeding: we revised the factor used for the

calculation of GNA to reflect the findings at the cost verification (*see* the August 5, 2002, ''Cost of Production and Constructed Value Calculation Adjustments for the Final Determination'' memorandum), and we added an adjustment for U.S. billing adjustments (BILADJU) to reflect information in Saarstahl's April 30, 2002, submission.

The methodologies employed to incorporate the above changes in our programming are described in the Final Analysis Memorandum.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Tariff Act, the Department will direct the U.S. Customs Service to continue to suspend liquidation of all entries of wire rod from Germany that are entered, or withdrawn from warehouse, for consumption on after 90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average margins for this proceeding are as follows:

Exporter/manufacturer	Margin (percent)
Saarstahl AG	15.12
All Others	15.12

Commission Notification

In accordance with section 735(d) of the Tariff Act, we have notified the International Trade Commission of our determination. As our final determination is affirmative, the Commission shall, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the Commission determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the Commission determines such injury does exist, the Department will issue an antidumping duty order.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of business proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Tariff Act.

Dated: August 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix of Issues in the Issues and Decision Memorandum

Comment 1: Indirect Selling Expenses Incurred in Germany on U.S. Sales
Comment 2: Adverse Facts Available for Unreported U.S. Sales
Comment 3: Interest Rates for Euro-Denominated Sales
Comment 4: Missing Payment Dates
Comment 5: Credit Expense Calculations for ''Split Payments''
Comment 6: Critical Circumstances
Comment 7: Use of Facts Available for Freight Expenses
Comment 8: Use of Facts Available for Packing Expenses
Comment 9: Exclusion of Tire Cord Wire Rod and Tire Bead Wire Rod
Comment 10: The ''Zeroing'' Methodology
Comment 11: The Arm's-Length Test
Comment 12: Level of Trade

[FR Doc. 02–22253 Filed 8–29–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–833]

Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final affirmative countervailing duty determination and final negative critical circumstances determination.

SUMMARY: The Department of Commerce has made a final determination that countervailable subsidies are being provided to certain producers and exporters of carbon and certain alloy steel wire rod from Brazil. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section, below. We have also made a final determination that critical circumstances do not exist with respect to imports of carbon and certain alloy steel wire rod from Brazil.

EFFECTIVE DATE: August 30, 2002.

FOR FURTHER INFORMATION CONTACT: Melani Miller, Jennifer D. Jones, Andrew Smith, or Daniel J. Alexy, Office of AD/CVD Enforcement Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0116, (202) 482–1276, (202) 482–4194, or (202) 482–1540, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are to 19 CFR Part 351 (April 2001).

Petitioners

The petitioners in this investigation are Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (collectively, ''petitioners'').

Case History

The following events have occurred since the publication of the preliminary determination in the **Federal Register**. *See Preliminary Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 5967 (February 8, 2002) (''Preliminary Determination'').

On February 13 and 14, 2002, the petitioners submitted further comments with respect to the responses filed by the respondents in the proceeding, the Government of Brazil (''GOB''), Companhia Siderurgica Belgo-Mineira (''Belgo Mineira''), and Gerdau S.A. (''Gerdau''). The Department issued supplemental questionnaires to the GOB, Gerdau, and Belgo Mineira on February 19, 2002, and received responses to those questionnaires on March 7, 2002.

From March 12, 2002 to March 27, 2002, we conducted a verification of the questionnaire responses submitted by the GOB, Belgo Mineira, and Gerdau.

On March 19, 2002, we published a **Federal Register** notice aligning the final determination in this proceeding with the earliest final determination in the companion antidumping duty investigations. See Countervailing Duty Investigations of Carbon and Certain Alloy Steel Wire Rod from Brazil,

Canada, Germany, Trinidad and Tobago, and Turkey: Notice of Alignment With Final Antidumping Duty Determinations, 67 FR 12524 (March 19, 2002).

On July 2, 2002, we received a combined case brief from the GOB, Belgo Mineira, and Gerdau, and a case brief from the petitioners. On July 15, 2002, we received a combined rebuttal brief from the GOB, Belgo Mineira, and Gerdau, as well as a rebuttal brief from the petitioners.

Period of Investigation

The period for which we are measuring subsidies, or period of investigation is calendar year 2000.

Scope of Investigation

The merchandise covered by these investigations is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter (''subject merchandise'' or ''wire rod'').

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the *Harmonized Tariff Schedule of the United States* (''HTSUS'') definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. Grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

Grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality''' or ''tire bead quality''' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Scope Comments

On April 2, 2002, in conjunction with the preliminary determinations in the companion antidumping duty proceedings, the scope in both the companion countervailing duty and antidumping duty proceedings was revised. *See* Memorandum to Faryar Shirzad, dated April 2, 2002, ''*Carbon and Certain Alloy Steel Wire Rod: Requests for exclusion of various tire cord quality wire rod and tire bead quality wire rod products from the scope of Antidumping Duty (Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela) and Countervailing Duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) Investigations*,'' which is on file in the Department's Central Records Unit in Room B–099 of the main Department building (''CRU'').

Since April 2, 2002, a number of parties have filed requests asking the Department to exclude various products from the scope of the concurrent antidumping duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago and Ukraine) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations. On May 6, 2002, Ispat Hamburger Stahlwerke GmbH and Ispat Walzdraht Hochfeld GmbH (collectively, ''Ispat Germany'') requested an exclusion for ''super clean valve spring wire.'' Two parties filed additional exclusion requests on June 14, 2002: Bluff City Steel asked that the Department exclude ''clean-steel precision bar,'' and Lincoln Electric Company sought the exclusion of its EW 2512 grade of metal inert gas welding wire. On June 28, 2002, the petitioners filed objections to a range of scope exclusion requests including: (i) Bluff City Steel's request for clean precision bar; (ii) Lincoln Electric Company's request for EW 2512 grade wire rod; (iii) Ispat Germany's request for ''super clean valve spring wire;'' (iv) Tokusen USA's January 22, 2002 request for 1070 grade tire cord and tire bead quality wire rod (tire cord wire rod); and (v) various parties' request for 1090 grade tire cord wire rod.

In addition, Moldova Steel Works requested the exclusion of various grades of tire cord wire rod on July 17, 2002. The Rubber Manufacturers Association (''RMA''), Ispat Germany, Lincoln Electric and Bluff City filed rebuttals to petitioners' June 28 submission on July 8, 11, 17, and 29, 2002, respectively. The RMA filed additional comments on July 30, 2002.[1]

The Department has analyzed these requests and the petitioners objections and we find no modifications to the scope are warranted. *See* Memorandum from Richard Weible to Faryar Shirzad, ''Carbon and Certain Alloy Steel Wire Rod; Antidumping Duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine) and Countervailing Duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) Investigations: Requests for Scope Exclusion'' dated August 23, 2002, which is on file in the CRU.

Injury Test

Because Brazil is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (''ITC'') is required to determine whether imports of the subject merchandise from Brazil materially injure, or threaten material injury to, a U.S. industry. On October 15, 2001, the ITC transmitted to the Department its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from Brazil of the subject merchandise. *See Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela*, 66 FR 54539 (October 29, 2001).

Critical Circumstances

The petitioners have alleged that critical circumstances within the meaning of section 703(e) of the Act exist with respect to the subject merchandise. We did not address the petitioners' critical circumstances allegation in the *Preliminary Determination* because the *Preliminary Determination* was negative. However, as our final determination is affirmative, we are now addressing this allegation.

As discussed in the Memorandum to Richard Moreland, ''Countervailing Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from Brazil Final Determination of Critical Circumstances,'' pursuant to section 705(a)(2) of the Act, we find that critical circumstances do not exist for imports of the subject merchandise from Brazil.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the ''Issues and Decision Memorandum'' from Richard W. Moreland, Deputy Assistant Secretary, Import Administration to Faryar Shirzad, Assistant Secretary, Import Administration, dated August 23, 2002 (''*Decision Memorandum*''), which is hereby adopted by this notice. Attached to this notice as Appendix I is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/* under the heading ''Brazil.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Suspension of Liquidation

In accordance with section 705(c)(1)(C) of the Act, we are directing the Customs Service (''Customs'') to suspend liquidation of all imports of the subject merchandise from Brazil that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. These suspension of liquidation instructions will remain in effect until further notice.

We determine the total estimated net subsidy rate for each company to be the following:

Producer/Exporter	Net Subsidy Rate
Companhia Siderurgica Belgo-Mineira	6.74
Gerdau S.A.	4.44
All Others	6.11

We will issue a countervailing duty order if the ITC issues a final affirmative injury determination and we will instruct Customs to require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an Administrative Protective Order (''APO''), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: August 23,2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I

List of Comments and Issues in the Decision Memorandum

Comment 1: Usina Siderurgica da Bahia S.A. (''Usiba'') and Cia Siderurgica do Nordeste (''Cosinor'') Privatizations
Comment 2: Government of Brazil (''GOB'') Financing for the Purchase of Usiba
Comment 3: Benchmarks for Long-Term, Brazilian Currency Denominated Loans and Discount Rates
Comment 4: Financing for the Acquisition or Lease of Machinery and Equipment through the Special Agency for Industrial Financing (''FINAME'') Loans
Comment 5: National Bank for Economic and Social Development (''BNDES'') Export Financing
Comment 6: Reduction of the Urban Building and Land Tax (''IPTU'')
Comment 7: BNDES Financing for Companhia Siderurgica Belgo-Mineira's (''Belgo Mineira'') Acquisition of Dedini Siderurgicia de Piracicaba (''Dedini'')
Comment 8: Program of Social Integration (''PIS'') and Social Contributions of Billings (''COFINS'') - Direct Taxes vs. Indirect Taxes

[1] On August 9, 2002, Bekaert Corporation requested an exclusion for certain high chrome/high silicon steel wire rod. from the scope of these investigations. This request was filed too late to be considered for the final determinations in these investigations.

Comment 9: PIS and COFINS - Excessive Remission
Comment 10: Programa de Financiamento as Exportacoes (''PROEX'') Equalization Program
Comment 11: BNDES Financing of Belgo Mineira's Acquisition of Mendes Junior Siderurgia S.A. (''MJS'')

[FR Doc. 02–22241 Filed 8–29–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–833]

Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination Carbon and Certain Alloy Steel Wire Rod from Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final affirmative countervailing duty determination and final negative critical circumstances determination.

SUMMARY: The Department of Commerce has made a final determination that countervailable subsidies are being provided to producers and exporters of carbon and certain alloy steel wire rod from Germany. For more information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section below. We have also made a final determination that critical circumstances do not exist with respect to imports of carbon and certain alloy steel wire rod from Germany.

EFFECTIVE DATE: August 30, 2002.

FOR FURTHER INFORMATION CONTACT: FOR FURTHER INFORMATION CONTACT: Melanie Brown, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 3096, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4987.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are to 19 CFR Part 351 (April, 2001).

Petitioners

The petitioners in these investigations are Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (collectively, ''petitioners'').

Case History

The following events have occurred since the publication of the preliminary determination in the **Federal Register** (*see Preliminary Affirmative Countervailing Duty Determination and Preliminary Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Germany*, 67 FR 5991 (February 8, 2002) (''*Preliminary Determination*'')).

On March 19, 2002, we published a **Federal Register** notice aligning the final determination in this proceeding with the earliest final determination in the companion antidumping duty investigations. *See Countervailing Duty Investigations of Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey: Notice of Alignment With Final Antidumping Duty Determinations*, 67 FR 12524 (March 19, 2002).

From March 11 to 20, 2002, we conducted verification of the questionnaire responses submitted by Saarstahl AG (''Saarstahl''), Ispat Hamburger Stahlwerke, Ispat Stalwerk Ruhrort, and Ispat Walzdraht Hochfeld (collectively ''Ispat''), and the Government of Germany.

On May 29, 2002 we received case briefs from Saarstahl, Ispat, and the petitioners. On June 3, 2002, we received rebuttal briefs from Saarstahl, Ispat, the Government of Germany, and the petitioners.

Period of Investigation

The period for which we are measuring subsidies, or the period of investigation (''POI''), is calendar year 2000.

Scope of Investigation

The merchandise covered by this investigation is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (''HTSUS'') definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual

200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality''' or ''tire bead quality''' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Scope Comments

On April 2, 2002, in conjunction with the preliminary determinations in the companion antidumping duty proceedings, the scope in both the companion countervailing duty and antidumping duty proceedings was revised. *See* Memorandum to Faryar Shirzad, dated April 2, 2002, ''*Carbon and Certain Alloy Steel Wire Rod: Requests for exclusion of various tire cord quality wire rod and tire bead quality wire rod products from the scope of Antidumping Duty (Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela) and Countervailing Duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) Investigations*,'' which is on file in the Department's Central Records Unit in Room B–099 of the main Department building (''CRU'').

Since April 2, 2002, a number of parties have filed requests asking the Department to exclude various products from the scope of the concurrent antidumping duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago and Ukraine) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations. On May 6, 2002, Ispat Hamburger Stahlwerke GmbH and Ispat Walzdraht Hochfeld GmbH (collectively, Ispat Germany) requested an exclusion for ''super clean valve spring wire.'' Two parties filed additional exclusion requests on June 14, 2002: Bluff City Steel asked that the Department exclude ''clean-steel precision bar,'' and Lincoln Electric Company sought the exclusion of its EW 2512 grade of metal inert gas welding wire. On June 28, 2002, petitioners (Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.) filed objections to a range of scope exclusion requests including: i) Bluff City Steel's request for clean precision bar; ii) Lincoln Electric Company's request for EW 2512 grade wire rod; iii) Ispat Germany's request for ''super clean valve spring wire;'' iv) Tokusen USA's January 22, 2002 request for 1070 grade tire cord and tire bead quality wire rod (tire cord wire rod); and v) various parties' request for 1090 grade tire cord wire rod.

In addition, Moldova Steel Works requested the exclusion of various grades of tire cord wire rod on July 17, 2002. The Rubber Manufacturers Association (the RMA), Ispat Germany, Lincoln Electric and Bluff City filed rebuttals to petitioners' June 28 submission on July 8, 11, 17, and 29, 2002, respectively. The RMA filed additional comments on July 30, 2002.[1]

The Department has analyzed these requests and the petitioners' objections and we find no modifications to the scope are warranted. See Memorandum from Richard Weible to Faryar Shirzad, dated August 23, 2002,''Carbon and Certain Alloy Steel Wire Rod; Antidumping Duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine) and Countervailing Duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) Investigations: Requests for Scope Exclusion,'' which is on file in the CRU.

[1] On August 9, 2002, Bekaert Corporation requested an exclusion for certain high chrome/high silicon steel wire rod from the scope of these investigations. This request was filed too late to be considered for the final determinations in these investigations.

Injury Test

Because Germany is a ''Subsidies Agreement Country'' within the meaning of section 701(b)(1) of the Act, the International Trade Commission (''ITC'') is required to determine whether imports of the subject merchandise from Germany materially injure, or threaten material injury to, a U.S. industry. On October 29, 2001, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from Germany of the subject merchandise. *See Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela*, 66 FR 54539 (October 29, 2001).

Critical Circumstances

Section 703(e)(1) of the Act provides that critical circumstances exist if the Department determines that there is a reasonable basis to believe or suspect that (1) an alleged subsidy is inconsistent with the Agreement on Subsidies and Countervailing Measures referred to in section 101(d)(12) of the Uruguay Round Agreements Act (''*Subsidies Agreement*'') (*see* section 771(8) of the Act), and (2) there have been massive imports of the subject merchandise over a relatively short period of time. In past critical circumstances determinations, the Department has only found ''prohibited subsidies'' under Part II of the *Subsidies Agreement* to be inconsistent with the *Subsidies Agreement. See, e.g., Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination: Certain Softwood Lumber Products from Canada*, 66 FR 43186, 43189 (August 17, 2001). In the instant investigation, petitioners argue that the class of subsidies found to be inconsistent with the *Subsidies Agreement* should be expanded to include ''actionable subsidies'' under Part III of the *Subsidies Agreement*.

In the *Preliminary Determination* the Department found that critical circumstances do not exist with respect to subject merchandise from Germany because we found that no subsidies inconsistent with the *Subsidies Agreement* exist in Germany. Thus, the first requirement of section 703(e)(1) of the Act has not been met. More specifically, we found no prohibited subsidies (*i.e.*, Part II of the Subsidies

Agreement) to be countervailable in this case. Actionable subsidies, although they may give rise to a right to a remedy (*e.g.*, countervailing duties), are not inconsistent with the *Subsidies Agreement* within the meaning of section 703(e)(1) of the Act.

There is no new information on the record to call into question our preliminary negative critical circumstances determination. Therefore, we continue to find that critical circumstances do not exist with respect to imports of the subject merchandise from Germany.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the ''Issues and Decision Memorandum'' from Richard W. Moreland, Deputy Assistant Secretary, Import Administration to Faryar Shirzad, Assistant Secretary, Import Administration, dated August 23, 2002 (''*Decision Memorandum*'') or in the memorandum entitled ''Discussion of Comments Containing Proprietary Information'' from Richard W. Moreland, Deputy Assistant Secretary, Import Administration to Faryar Shirzad, Assistant Secretary, Import Administration, dated August 23, 2002 (''*Proprietary Comments Memorandum*''), which are hereby adopted by this notice. Attached to this notice as Appendix I is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Attached to this notice as Appendix II is a list of the issues which parties have raised and to which we have responded in the ''*Proprietary Comments Memorandum*.'' Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in these memoranda (in public form), which are on file in the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/* under the heading ''Germany.'' The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Suspension of Liquidation

As a result of our *Preliminary Determination*, we instructed the Customs Service to suspend liquidation of all entries of carbon and certain alloy steel wire rod from Germany which were entered or withdrawn from warehouse, for consumption on or after February 8, 2002, the date of the publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed Customs to discontinue the suspension of liquidation for merchandise for countervailing duty purposes entered on or after June 8, 2002, but to continue the suspension of liquidation of entries made between February 8, 2002 and June 7, 2002.

We have calculated an individual net subsidy rate for each manufacturer of the subject merchandise pursuant to section 705(c)(1)(B)(i) of the Act. In accordance with sections 777A(e)(2) and 705(c)(5)(A) of the Act, we have calculated the ''all others'' rate as the weighted average rate of Saarstahls's and Ispat's net subsidy rates. We determine the total estimated net countervailable subsidy rates to be:

Producer/Exporter	Net Subsidy Rate
Saarstahl, AG	18.46 percent *ad valorem*
Ispat (collectively, IHSW, IWHG, ISRG)	1.12 percent *ad valorem*
All Others	16.26 percent *ad valorem*

We will issue a countervailing duty order and reinstate the suspension of liquidation if the ITC issues a final affirmative injury determination, and we will instruct Customs to require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an Administrative Protective Order (''APO''), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: August 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I

List of Comments and Issues in the Decision Memorandum

Comment 1: Appropriate AUL for Saarstahl
Comment 2: Appropriate AUL for IHSW
Comment 3: Saarstahl's Untimely Submission of Sales Data
Comment 4: Use of Adverse Facts Available
Comment 5: Schmiede's Sales
Comment 6: Saarstahl's Bankruptcy
Comment 7: Assumption of Saarstahl's Legacy Costs
Comment 8: Saarstahl's 1997 Reorganization
Comment 9: Saarstahl's ECSC Article 54 Loans
Comment 10: Saarstahl's Creditworthiness
Comment 11: Saarstahl's Research and Development Assistance
Comment 12: Previously Countervailed Programs for Saarstahl
Comment 13: HSW's Change of Ownership
Comment 14: Other Benefits Allegedly Conferred in the Sale of HSW
Comment 15: Application of the ''Same Person'' Test to IHSW
Comment 16: IHSW's Creditworthiness
Comment 17: Cross-ownership Between Ispat and WDI
Comment 18: ISRG's Intercompany Sales
Comment 19: ISRG's Article 56 Grant
Comment 20: ISRG's Rheinland-Pfalz State Government Grant

[FR Doc. 02–22242 Filed 8–29–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–274–805]

Final Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final negative countervailing duty determination.

SUMMARY: The Department of Commerce has made a final determination that countervailable subsidies are not being provided to producers and exporters of carbon and certain alloy steel wire rod from Trinidad and Tobago.

EFFECTIVE DATE: August 30, 2002.

FOR FURTHER INFORMATION CONTACT: Melani Miller, S. Anthony Grasso, or Daniel J. Alexy, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0116, (202) 482–3853, and (202) 482–1540, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''). In addition, unless other wise indicated, all citations to the Department of Commerce's (''the Department'') regulations are to 19 CFR Part 351 (April 2001).

Petitioners

The petitioners in this investigation are Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (collectively, ''petitioners'').

Case History

The following events have occurred since the publication of the preliminary determination in the **Federal Register**. *See Preliminary Affirmative Countervailing Duty Determination and Preliminary Negatigve Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago,* 67 FR 6001 (February 8, 2002) (''Preliminary Determination'').

On March 19, 2002, we published a **Federal Register** notice aligning the final determination in this proceeding with the earliest final determination in the companion antidumping duty investigations. *See Countervailing Duty Investigations of Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey: Notice of Alignment With Final Antidumping Duty Determinations,* 67 FR 12524 (March 19, 2002).

On April 15, 2002, the Government of Trinidad and Tobago (''GOTT'') and Caribbean Ispat Limited (''CIL''), the sole respondent company in this investigation, submitted supplemental factual information.

From April 22, 2002 to April 25, 2002, we conducted a verification of the questionnaire responses submitted by the GOTT and CIL.

On July 19, 2002 we received a combined case brief from GOTT and CIL, and a case brief from the petitioners. On July 24, 2002, we received a combined rebuttal brief from the GOTT and CIL, as well as a rebuttal brief from the petitioners.

Period of Investigation

The period for which we are measuring subsidies, or the period of investigation (''POI''), is calendar year 2000.

Scope of Investigation

The merchandise covered by these investigations is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter (''subject merchandise'' or ''wire rod'').

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the *Harmonized Tariff Schedule of the United States* (''HTSUS'') definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.,* products that contain by weight one or more of the following elements; 0.03 percent of more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. Grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown; (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

Grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings

7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Scope Comments

On April 2, 2002, in conjunction with the preliminary determinations in the companion antidumping duty proceedings, the scope in both the companion countervailing duty and antidumping duty proceedings was revised. *See* Memorandum to Faryar Shirzad, dated April 2, 2002, ''*Carbon and Certain Alloy Steel Wire Rod: Requests for exclusion of various tire cord quality wire rod and tire bead quality wire rod products from the scope of Antidumping Duty (Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela) and Countervailing Duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) Investigations*,'' which is on file in the Department's Central Records Unit in Room B–099 of the main Department building (''CRU'').

Since April 2, 2002, a number of parties have filed requests asking the Department to exclude various products from the scope of the concurrent antidumping duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago and Ukraine) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations. On May 6, 2002, Ispat Hamburger Stahlwerke GmbH and Ispat Walzdraht Hochfeld GmbH (collectively, ''Ispat Germany'') requested on exclusion for ''super clean valve spring wire.'' Two parties filed additional exclusion requests on June 14, 2002: Bluff City Steel asked that the Department exclude ''clean-steel precision bar,'' and Lincoln Electric Company sought the exclusion of its EW 2512 grade of metal inert gas welding wire. On June 28, 2002, the petitioners filed objections to a range of scope exclusion requests including: (i) Bluff City Steel's request for clean precision bar; (ii) Lincoln Electric Company's request for EW 2512 grade wire rod; (iii) Ispat Germany's request for ''super clean valve spring wire;'' (iv) Tokusen USA's January 22, 2002 request for 1070 grade tire cord and tire bead quality wire rod (tire cord wire rod); and (v) various parties' request for 1090 grade tire cord wire rod.

In addition, Moldova Steel Works requested the exclusion of various grades of tire cord wire rod on July 17, 2002. The Rubber Manufacturers Association (''RMA''), Ispat Germany, Lincoln Electric and Bluff City filed rebuttals to petitioners' June 28 submission on July 8, 11, 17, and 29, 2002, respectively. The RMA field additional comments on July 30, 2002.[1]

The Department has analyzed these requests and the petitioners' objections and we find no modifications to the scope are warranted. *See* Memorandum from Richard Weible to Faryar Shirzad, ''Carbon and Certain Alloy Steel Wire Rod; Antidumping Duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine) and Countervailing Duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) Investigations: Requests for Scope Exclusion'' dated August 23, 2002, which is on file in the CRU.

Critical Circumstances

The petitioners have alleged that critical circumstances within the meaning of section 703(e) of the Act exist with respect to the subject merchandise. In the *Preliminary Determination*, we found that critical circumstances did not exist with respect to subject merchandise from Trinidad and Tobago because no subsidies inconsistent with the World Trade Organization Agreement on Subsidies and Countervailing Measures existed in Trinidad and Tobago.

Because our final determination in this case is negative, we need not further address the issue of whether critical circumstances exist with respect to imports of subject merchandise from Trinidad and Tobago.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the ''Issues and Decision Memorandum'' from Richard W. Moreland, Deputy Assistant Secretary, Import Administration to Faryar Shirzad, Assistant Secretary, Import Administration, dated August 23, 2002 (''*Decision Memorandum''),* which is hereby adopted by this notice. Attached to this notice as Appendix I is a list of the issues which parties have raised and to which we have responded in the ''*Decision Memorandum*''. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/* under the heading ''Trinidad and Tobago.'' The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Suspension of Liquidation

In accordance with our *Preliminary Determination*, we instructed the Customs Service (''Customs'') to suspend liquidation of all entries of wire rod from Trinidad and Tobago, which were entered or withdrawn from warehouse, for consumption on or after February 8, 2002, the date of the publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed Customs to discontinue the suspension of liquidation for merchandise for countervailing duty purposes entered on or after June 8, 2002, but to continue the suspension of liquidation of entries made from February 8, 2002 through June 7, 2002.

Because we have made a final determination that countervailable subsidies are not being provided to producers and exporters of wire rod from Trinidad and Tobago, we are instructing Customs to terminate the suspension of liquidation for all shipments wire rod from Trinidad and Tobago entered, or withdrawn from warehouse, for consumption on or after February 8, 2002, but before June 8, 2002, and to release any bond or other security and refund any cash deposit.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the International Trade Commission of our determination.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

[1] On August 9, 2002, Bekaert Corporation requested an exclusion for certain high chrome/high silicon steel wire rod from the scope of these investigations. This request was field too late to be considered for the final determinations in these investigations.

Dated: August 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I

List of Comments and Issues in the Decision Memorandum

Comment 1: Change-in-Ownership Methodology
Comment 2: Change-in-Ownership Same Person Analysis
Comment 3: Sale of Iron and Steel Company of Trinidad and Tobago's (''ISCOTT'') Assets at Fair Market Value in an Arm's-Length Transaction
Comment 4: ISCOTT Debt Forgiveness
Comment 5: Equity Infusions into ISCOTT
Comment 6: Provision of Electricity
Comment 7: Petitioners' New Subsidy Allegation

[FR Doc. 02–22243 Filed 8–29–02; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–841]

Final Affirmative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final affirmative countervailing duty determination.

SUMMARY: The Department of Commerce has made a final determination that countervailable subsidies are being provided to certain producers and exporters of carbon and certain alloy steel wire rod from Canada. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section, below.

EFFECTIVE DATE: August 30, 2002.

FOR FURTHER INFORMATION CONTACT: Craig Matney, Audrey Twyman, or Stephen Cho, Office of AD/CVD Enforcement Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1778, (202) 482–3534, or (202) 482–3798, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are to 19 CFR Part 351 (April 2001).

Petitioners

The petitioners in this investigation are Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (collectively, ''petitioners'').

Case History

The following events have occurred since the publication of the preliminary determination in the **Federal Register**. *See Preliminary Affirmative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Canada*, 67 FR 5984 (February 8, 2002) (''*Preliminary Determination*'').

On February 26, 2002, the petitioners submitted further comments with respect to the responses filed by the Government of Canada (''GOC''), the Government of Quebec (''GOQ''), Ispat Sidbec, Inc. (''Ispat Sidbec''), Ivaco, Inc. (''Ivaco''), and Stelco, Inc. (''Stelco'') (collectively, ''respondents''). The Department issued supplemental questionnaires to these respondents on March 1, 2002, and received responses to those questionnaires on March 15 and 18, 2002.

On March 19, 2002, we published a **Federal Register** notice aligning the final determination in this proceeding with the earliest final determination in the companion antidumping duty investigations. *See Countervailing Duty Investigations of Carbon and Certain Alloy Steel Wire Rod from Canada, Germany, Trinidad and Tobago, and Turkey: Notice of Alignment With Final Antidumping Duty Determinations*, 67 FR 12524, (March 19, 2002).

Between April 22, 2002, and May 14, 2002, we conducted verifications of the questionnaire responses submitted by the GOQ, Ispat Sidbec, Stelco and Ivaco.

On July 8 and 12, 2002, we received case briefs and rebuttal briefs, respectively, from GOQ, Ispat Sidbec, Stelco and the petitioners.

Period of Investigation

The period for which we are measuring subsidies, or period of investigation (''POI''), is calendar year 2000.

Scope of Investigation

The merchandise covered by these investigations is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the *Harmonized Tariff Schedule of the United States* (''HTSUS'') definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. Grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

Grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1)

0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality''' or ''tire bead quality''' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Scope Comments

On April 2, 2002, in conjunction with the preliminary determinations in the companion antidumping duty proceedings, the scope in both the companion countervailing duty and antidumping duty proceedings was revised. *See* Memorandum to Faryar Shirzad, dated April 2, 2002, ''*Carbon and Certain Alloy Steel Wire Rod: Requests for exclusion of various tire cord quality wire rod and tire bead quality wire rod products from the scope of Antidumping Duty (Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela) and Countervailing Duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) Investigations*,'' which is on file in the Department's Central Records Unit in Room B–099 of the main Department building (''CRU'').

Since April 2, 2002, a number of parties have filed requests asking the Department to exclude various products from the scope of the concurrent antidumping duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago and Ukraine) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations. On May 6, 2002, Ispat Hamburger Stahlwerke GmbH and Ispat Walzdraht Hochfeld GmbH (collectively, Ispat Germany) requested an exclusion for ''super clean valve spring wire.'' Two parties filed additional exclusion requests on June 14, 2002: Bluff City Steel asked that the Department exclude ''clean-steel precision bar,'' and Lincoln Electric Company sought the exclusion of its EW 2512 grade of metal inert gas welding wire. On June 28, 2002, petitioners filed objections to a range of scope exclusion requests including: i) Bluff City Steel's request for clean precision bar; ii) Lincoln Electric Company's request for EW 2512 grade wire rod; iii) Ispat Germany's request for ''super clean valve spring wire;'' iv) Tokusen USA's January 22, 2002, request for 1070 grade tire cord and tire bead quality wire rod (tire cord wire rod); and v) various parties' request for 1090 grade tire cord wire rod.

In addition, Moldova Steel Works requested the exclusion of various grades of tire cord wire rod on July 17, 2002. The Rubber Manufacturers Association (the RMA), Ispat Germany, Lincoln Electric and Bluff City filed rebuttals to petitioners' June 28 submission on July 8, 11, 17, and 29, 2002, respectively. The RMA filed additional comments on July 30, 2002.[1]

The Department has analyzed these requests and the petitioners' objections and we find no modifications to the scope are warranted. *See* Memorandum from Richard Weible to Faryar Shirzad, ''Carbon and Certain Alloy Steel Wire Rod; Antidumping Duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine) and Countervailing Duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) Investigations: Requests for Scope Exclusion'' dated August 23, 2002, which is on file in the CRU.

Injury Test

Because Canada is a ''Subsidies Agreement country'' within the meaning of section 701(b) of the Act, the International Trade Commission (''ITC'') is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry. On October 15, 2001, the ITC transmitted to the Department its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from Canada of the subject merchandise. *See Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela*, 66 FR 54539 (October 29, 2001).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the ''Issues and Decision Memorandum'' from Richard W. Moreland, Deputy Assistant Secretary, Import Administration to Faryar Shirzad, Assistant Secretary, Import Administration, dated August 23, 2002 (''*Decision Memorandum*''), which is hereby adopted by this notice. Attached to this notice as Appendix I is a list of the issues which parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/* under the heading ''Canada.'' The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Suspension of Liquidation

As a result of our *Preliminary Determination*, we instructed the Customs Service to suspend liquidation of all entries of carbon and certain alloy steel wire rod from Canada, except for subject merchandise produced and exported by Stelco and Ivaco (both of which had either a zero or de minimis weighted-average margin), which were entered or withdrawn from warehouse,

[1] On August 9, 2002, Bekaert Corporation requested an exclusion for certain high chrome/high silicon steel wire rod from the scope of these investigations. This request was filed too late to be considered for the final determinations in these investigations.

for consumption on or after February 8, 2002, the date of the publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed Customs to discontinue the suspension of liquidation for countervailing duty purposes for merchandise entered on or after June 8, 2002, but to continue the suspension of liquidation of entries made between February 8, 2002, and June 7, 2002.

We have calculated an individual net subsidy rate for each manufacturer of the subject merchandise pursuant to section 705(c)(1)(B)(i) of the Act. In accordance with sections 777A(e)(2) and 705(c)(5)(A) of the Act, we have set the ''all others'' rate as Ispat Sidbec's rate, because the rates for all other investigated companies are either zero or de minimis. We determine the total estimated net subsidy rate for each company to be:

	Net Subsidy Rate
Ispat Sidbec	6.61
Stelco	0.00
Ivaco	0.00
All Others	6.61

We will issue a countervailing duty order and reinstate the suspension of liquidation (except for imports from Stelco and Ivaco, which have either a zero or *de minimis* rate) if the ITC issues a final affirmative injury determination and we will instruct Customs to require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an Administrative Protective Order (''APO''), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: August 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration

Appendix I

List of Comments and Issues in the Decision Memorandum

Comment 1: Post-Privatization Treatment of Ispat Sidbec's Pre-Privatization Subsidies
Comment 2: Application of the Department's Change-in-Ownership Methodology
Comment 3: Equityworthiness and Creditworthiness
Comment 4: Countervailability of 1988 Debt-to-Equity Conversion and 1986–1992 Grants
Comment 5: 1986–1992 Grants
Comment 6: Project Bessemer
Comment 7: Ispat Sidbec's Freight Revenue
Comment 8: Ispat Sidbec's AUL
Comment 9: Ispat Inland's Sales
Comment 10: Deitcher Brothers Sales
Comment 11: Calculation of Deposit Rate
Comment 12: Stelco's Energy Efficiency and Conservation Programs
Comment 13: New Subsidy Allegations

[FR Doc. 02–22244 Filed 8–29–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–809]

Final Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final negative countervailing duty determination.

SUMMARY: The Department of Commerce has made a final determination that countervailable subsidies are not being provided to producers and exporters of carbon and certain alloy steel wire rod from Turkey.

EFFECTIVE DATE: August 30, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer D. Jones, S. Anthony Grasso, or Andrew Smith, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482- 1664, (202) 482–3853, or (202) 482–1276, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations are to 19 CFR Part 351 (April 2001).

Petitioners

The petitioners in this investigation are Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (collectively, ''petitioners'').

Case History

The following events have occurred since the publication of the Preliminary Determination in the **Federal Register**. *See Preliminary Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Turkey*, 67 FR 5976 (February 8, 2002) (''*Preliminary Determination*'').

On February 12, 2002 and February 21, 2002, the petitioners submitted further comments with respect to the *Preliminary Determination*. The Department issued a third supplemental questionnaire to the Government of the Republic of Turkey (''GRT''), Colakoglu Metalurji, A.S. (''Colakoglu''), and Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi, A.S. (''Habas'') on February 14, 2002, and received responses to those questionnaires on March 4, 2002.

From March 11, 2002 to March 22, 2002, we conducted a verification of the questionnaire responses submitted by the GRT, Colakoglu, and Habas.

On March 19, 2002, we published a **Federal Register** notice aligning the final determination in this proceeding with the earliest final determination in the companion antidumping duty investigations. *See Countervailing Duty Investigations of Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey: Notice of Alignment With Final Antidumping*

Duty Determinations, 67 FR 12524, (March 19, 2002).

On July 22, 2002, we received a combined case brief from the GRT, Colakoglu, and Habas and a case brief from the petitioners. On July 26, 2002, we received a combined rebuttal brief from the GRT, Colakoglu, and Habas, as well as a rebuttal brief from the petitioners.

Period of Investigation

The period for which we are measuring subsidies, or the period of investigation (''POI''), is calendar year 2000.

Scope of Investigation

The merchandise covered by these investigations is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (''HTSUS'') definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. Grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

Grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Scope Comments

On April 2, 2002, in conjunction with the preliminary determinations in the companion antidumping duty proceedings, the scope in both the companion countervailing duty and antidumping duty proceedings was revised. *See* Memorandum to Faryar Shirzad, dated April 2, 2002, ''*Carbon and Certain Alloy Steel Wire Rod: Requests for exclusion of various tire cord quality wire rod and tire bead quality wire rod products from the scope of Antidumping Duty (Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela) and Countervailing Duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) Investigations*,'' which is on file in the Department's Central Records Unit in Room B–099 of the main Department building (''CRU'').

Since April 2, 2002, a number of parties have filed requests asking the Department to exclude various products from the scope of the concurrent antidumping duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago and Ukraine) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations. On May 6, 2002, Ispat Hamburger Stahlwerke GmbH and Ispat Walzdraht Hochfeld GmbH (collectively, Ispat Germany) requested an exclusion for ''super clean valve spring wire.'' Two parties filed additional exclusion requests on June 14, 2002: Bluff City Steel asked that the Department exclude ''clean-steel precision bar,'' and Lincoln Electric Company sought the exclusion of its EW 2512 grade of metal inert gas welding wire. On June 28, 2002, petitioners filed objections to a range of scope exclusion requests including: i) Bluff City Steel's request for clean precision bar; ii) Lincoln Electric Company's request for EW 2512 grade wire rod; iii) Ispat Germany's request for ''super clean valve spring wire;'' iv) Tokusen USA's January 22, 2002 request for 1070 grade tire cord and tire bead quality wire rod (tire cord wire rod); and v) various parties' request for 1090 grade tire cord wire rod.

In addition, Moldova Steel Works requested the exclusion of various grades of tire cord wire rod on July 17,

2002. The Rubber Manufacturers Association (the RMA), Ispat Germany, Lincoln Electric and Bluff City filed rebuttals to petitioners' June 28 submission on July 8, 11, 17, and 29, 2002, respectively. The RMA filed additional comments on July 30, 2002.[1]

The Department has analyzed these requests and the petitioners' objections and we find no modifications to the scope are warranted. *See* Memorandum from Richard Weible to Faryar Shirzad, ''Carbon and Certain Alloy Steel Wire Rod; Antidumping Duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine) and Countervailing Duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) Investigations: Requests for Scope Exclusion'' dated August 23, 2002, which is on file in the CRU.

Critical Circumstances

The petitioners have alleged that critical circumstances within the meaning of section 703(e) of the Act exist with respect to the subject merchandise.

Because our final determination in this case is negative, we need not further address the issue of whether critical circumstances exist with respect to imports of subject merchandise from Turkey.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the ''Issues and Decision Memorandum'' from Richard W. Moreland, Deputy Assistant Secretary, Import Administration to Faryar Shirzad, Assistant Secretary, Import Administration, dated August 23, 2002 (''*Decision Memorandum*''), which is hereby adopted by this notice. Attached to this notice as Appendix I is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/* under the heading ''Turkey.'' The paper copy and electronic version of the *Decision Memorandum* are identical in content.

[1] On August 9, 2002, Bekaert Corporation requested an exclusion for certain high chrome/high silicon steel wire rod from the scope of these investigations. This request was filed too late to be considered for the final determinations in these investigations.

Suspension of Liquidation

In the *Preliminary Determination*, the total net countervailable subsidy rates for all the responding companies were *de minimis* and, therefore, we did not suspend liquidation. For the final determination, because the rates for all the responding companies remain *de minimis*, we are not directing the Customs Service to suspend liquidation of CASWR from Turkey, pursuant to section 705(c)(2) of the Act.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the International Trade Commission of our determination.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to an Administrative Protection Order (''APO'') of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: August 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I

List of Comments and Issues in the Decision Memorandum

Comment 1: General Incentives Investment Program

Comment 2: Investment Allowances

Comment 3: Value-Added Tax Programs

Comment 4: Customs Duty Exemption

Comment 5: Taxes, Dues, and Fees Exemptions

Comment 6: Foreign Exchange Loan Assistance

Comment 7: Financing Guarantees

Comment 8: Inward Processing Regime Customs Duty Exemption

Comment 9: Turkish Export-Import Bank Programs

[FR Doc. 02–22245 Filed 8–29–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board (CSSPAB) will meet Tuesday, September 17, 2002, from 9 a.m. until 5 p.m., Wednesday, September 18, 2002, from 9 a.m. until 5 p.m. and on Thursday, September 19, 2002, from 9 a.m. until 3:30 p.m. All sessions will be open to the public. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. Details regarding the Board's activities are available at *http://csrc.nist.gov/csspab/.*

DATES: The meeting will be held on September 17, 2002, from 9 a.m. until 5 p.m., September 18, 2002, from 9 a.m. until 5 p.m., and September 19, 2002, from 9 a.m. until 3:30 p.m.

ADDRESSES: The meeting will take place at the General Services Administration, 7th and D Streets, SW., Room 5700, Washington, DC.

Agenda

—Welcome and Overview
—Discussion of CSSPAB Privacy Report
—Discussion of CSSPAB Baseline Standards Report
—Updates on Recent Computer Security Legislation
—Update by OMB on Privacy and Security Issues
—Agency Briefing on Compliance with the Government Paperwork Elimination Act (GPEA)
—Discussion of Digital Millennium Copyrights Act Issues
—Agenda Development for December 2002 CSSPAB meeting
—Wrap-Up

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation

The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker

will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the CSSPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. It would be appreciated if 35 copies of written material were submitted for distribution to the Board and attendees no later than September 12, 2002. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Dr. Fran Nielsen, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–3669.

Dated: August 22, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–22182 Filed 8–29–02; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081602A]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

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

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a 1–year Letter of Authorization (LOA) to take marine mammals incidental to the U.S. Navy's operation of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar operations has been issued to the Chief of Naval Operations, Department of the Navy, 2000 Navy Pentagon, Washington, DC, and persons operating under his authority.

DATES: Effective from August 16, 2002, through August 15, 2003.

ADDRESSES: A copy of the July 16, 2002, application is available by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning the contact listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the U.S. Navy's operation of SURTASS LFA sonar were published on July 16, 2002 (67 FR 46712), and remain in effect until August 15, 2007. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the SURTASS LFA sonar system.

Summary of Request

On July 16, 2002, NMFS received an application from the U.S. Navy for an LOA under the regulations issued on July 16, 2002 (67 FR 46712), and effective on August 15, 2002. This application updated the information contained in both the original application for an LOA dated August 12, 1999, and the revised application submitted on April 6, 2000, for takings of marine mammals by harassment incidental to deploying the SURTASS LFA sonar system for training, testing and routine military operations. The July 16, 2002, mission intention letter requested a taking by harassment, under section 101(a)(5)(A) of the MMPA, of small numbers of marine mammals incidental to operation of the SURTASS LFA sonar system while conducting up to an estimated 6 active sonar missions (or equivalent shorter missions not to exceed 432 hours of transmit time) for one year in the Archipelagic Deep Basins Province, North Pacific Tropical Gyre (West) Province, and North Pacific Tropical Gyre (East) Province within the Pacific Trade Wind Biome and in the Kuroshio Current Province, and Pacific Subarctic Gyres (West) Province within the Pacific Westerly Winds Biome, as identified in 50 CFR 216.180(a).

Authorization

Accordingly, NMFS issued an LOA to the U.S. Navy on August 16, 2002, authorizing the taking of small numbers of marine mammals incidental to operating the SURTASS LFA sonar system for training, testing and routine military operations. Issuance of this LOA is based on findings, described in the preamble to the final rule (67 FR 46712, July 16, 2002), that the total takings by this activity will result in only small numbers of marine mammals being taken, have no more than a negligible impact on marine mammal stocks, and will not have an unmitigable adverse impact on the availability of the affected marine mammal stocks for subsistence uses. A copy of the Letter of Authorization and other cited documents are available at: *http://www.nmfs.noaa.gov/prot__res/PR2/Acoustics__Program/Sound.htmSonar*

This LOA remains valid until August 15, 2003, provided the Navy is in conformance with the conditions of the regulations and the LOA and the mitigation, monitoring, and reporting requirements described in 50 CFR 216.184–216.186 (67 FR 46712, July 16, 2002) and in the LOA are undertaken.

Dated: August 26, 2002.

David Cottingham

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–22262 Filed 8–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082302C]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Spiny Dogfish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Thursday, September 19, 2002, from 10 a.m. until 4 p.m.

ADDRESSES: This meeting will be held at the Marriott Hotel at BWI Airport, 1743 West Nursery Road, Baltimore, MD, telephone: 410–691–4514.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review updated fisheries and stock assessment information relative to spiny dogfish and to develop quota and other management measure recommendations for the 2003–2004 fishing year.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: August 26, 2002.

Richard W. Surdi,

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

[FR Doc. 02–22261 Filed 8–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081502G]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council (NPFMC) will hold an essential fish habitat Steering Committee (EFH Committee) meeting September 16–18, 2002. The EFH Committee will discuss the following: EFH alternatives, habitat areas of particular concern (HAPC) alternatives, the preliminary fishery evaluation, mitigation alternatives for minimizing the effects of fishing and the State of Alaska Marine Protected Areas (MPA) report.

DATES: The EFH Committee meeting will be held on Monday, September 16, 2002, from 8:30 a.m. to 5:30 p.m.; on Tuesday, September 17, 2002, from 8:30 a.m. to 5:30 p.m.; on Wednesday, September 18, 2002, from 8:30 a.m. to 3 p.m.

ADDRESSES: The EFH Committee meeting will be in Kodiak, Alaska at the Fishery Industrial Technology Center (FITC), 118 Trident Way, in room 221 . For directions call FITC at 907–486–1500.

FOR FURTHER INFORMATION CONTACT: Cindy Hartmann, NMFS, Habitat Conservation Division, 709 West 9th, Suite 461, PO Box 21668, Juneau, AK 99802–1668, 907–586–7585 e-mail: Cindy. Hartmann & commat; noaa. gov; or Cathy Coon, NPFMC, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252, 907–271–2809,e-mail: *Cathy.Coon@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The EFH Committee was formally established by the Chair of the NPFMC in May 2001. The EFH Committee was established in response to the need to prepare a supplemental environmental impact statement (SEIS) for the EFH fishery management plan amendments. The function of the EFH Committee is to serve as a steering committee in facilitating input to NMFS on the SEIS for EFH. The EFH Committee will provide input to NMFS and the Council from industry, the conservation community, and general public as appropriate. The EFH Committee also will submit periodic updates to the Council on the SEIS for EFH. Further information on the EFH Committee can be found on the NPFMC Web site at: *http://www.fakr.noaa.gov/npfmc/Committees/EFH/efh.htm.*

Possible agenda items for the September 2002 EFH Committee meeting include: review and discussion of revised EFH and HAPC alternatives; finalizing EFH alternative recommendations; finalizing HAPC alternative recommendations; discussion of a nomination and evaluation process for HAPC sites and types; discussion of gear impacts on habitat; review of the preliminary fishery evaluation; discussion of impacts that are more than minimal and not temporary in nature; discussion of potential mitigation tools for each fishery including adaptive management and rationalization; discussion of how ''to the extent practicable'' may apply to these mitigation alternatives; recommendations on mitigation alternatives for minimizing the effects of fishing; research needs and the State of Alaska MPA report may also be discussed. The EFH Committee will develop recommendations for the October NPFMC meeting on some or all of the agenda items listed above. The EFH Committee also will discuss plans for future tasks and meetings.

For further information about the EFH SEIS, see the Notice of Intent to prepare an SEIS published to the Proposed Rules section of the **Federal Register** (66 FR 30396, June 6, 2001). For further information on the preliminary alternative approaches for the designation of EFH and HAPC (see 67 FR 1325, January 10, 2002).

Although other issues not contained in this agenda may come before the EFH Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act), those issues may not be the subject of formal action during this meeting. Formal action will be restricted to those issues specifically identified in this notice and any issues arising after publication of the notice that require emergency action under section 305(c) of the Magnuson Act, provided the public has been notified of the Committee's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cindy Hartmann, 907–586–7235, at least 5 working days prior to the meeting date.

Dated: August 27, 2002.

Richard W. Surdi,

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

[FR Doc. 02–22263 Filed 8–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 30, 2002.

Title OMB Number: Air Force Recruiting Information Support System (AFRISS); OMB Number 0701–[New Collection].

Type of Request: New collection.

Number of Respondents: 1,300,000.

Responses Per Respondent: 1.

Annual Responses: 1,300,000.

Average Burden Per Response: 64 minutes.

Annual Burden Hours: 1,386,413.

Needs and Uses: Air Force Recruiting Service requires the collection of specific information on prospective Air Force enlistees entering the Air Force. The information is used to create the initial personnel record, prescreen, and qualify enlistees fit for service and ultimately induction. The information is also collected to process security clearances and to record metrics to be used for demographics/market research and system performance. AFRISS provides comprehensive integration, interface, and standardization of all programs that manage personnel resources in support of Air Force recruiting. The system extends automated capabilities out to the individual recruiter, flight, squadron, and groups. It provides an automated interface to the Military Entrance Processing Center Station (MEPS) where applicants undergo physical evaluation, testing, verification interviews, and tentative job reservation. It will provide an automated interface to the Modernized Military Personnel System (MilMod) where only pertinent and required applicant information is placed in a permanent military system of record. It also provides reporting capabilities at all levels of Air Force Recruiting management to make informed decisions on recruiting business rules and practice to increase the number of accessions.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 26, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–22136 Filed 8–29–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 30, 2002.

Title, Form, and OMB Number: United States Navy Illicit Behavior Screening Certificate; NACRUIT Form 1133/65; OMB Number 0703—[New Collection].

Type of Request: New collection.

Number of Respondents: 65,000.

Responses Per Respondent: 1.

Annual Response: 65,000.

Average Burden Per Response: 12 minutes.

Annual Burden Hours: 13,000.

Needs and Uses: Used by the Navy Recruiting Command to assess an applicant's history of alcohol abuse, drug abuse, or other illicit behavior in determining a person's qualifications to enter military service. The collection of this information is needed in order to make a fair and reasonable enlistment eligibility determination of an applicant.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer:

Ms. Jackie Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Crushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 26, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–22137 Filed 8–29–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by September 30, 2002.

Title, Form, and OMB Number: Enlistee Financial Statement; NACRUIT Form 1130/13; OMB Number 0703–0020.

Type of Request: Reinstatement.

Number of Respondents: 2,700.

Responses Per Respondent: 1.

Annual Responses: 2,700.

Average Burden Per Response: 45 minutes.

Annual Burden Hours: 2,025.

Needs and Uses: All persons interested in entering the U.S. Navy or

Naval Reserve, who have someone either fully or partially dependent on them for financial support, must provide information on their current financial situation to determine if the individual will be able to meet their financial obligations on Navy pay. The prospective enlistee provides the information during an interview with a Navy recruiter.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 26, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–22138 Filed 8–29–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by September 30, 2002.

Title, Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 217, Special Contracting Methods, and Related Provisions and Clauses in DFARS 252.217; OMB Number 0704–0214.

Type of Request: Extension.

Number of Respondents: 40,892.

Responses per Respondent: 1.3.

Annual Responses: 53,160.

Average Burden Per Response: 14.4 hours.

Annual Burden Hours: 765,498.

Needs and Uses: DFARS Part 217 prescribes policies and procedures for acquiring supplies and services by special contracting methods. The clause at DFARS 252.217–7012 is used in master agreements for repair and alteration of vessels. Contracting officers use the information required by paragraph (d) of the clause to determine that the contractor is adequately insured. Contracting officers use the information required by paragraphs (f) and (g) of the clause to keep informed of lost or damaged property for which the Government is liable, and to determine the appropriate course of action for replacement or repair of the property. Contracting officers use the information required by the clause at DFARS 252.217–7018 to determine the place of performance under contracts for bakery and dairy products. This information helps to ensure that food products are manufactured and processed in sanitary facilities. Contracting officers use the information required by the provision at DFARS 252.217–7026 to identify the apparently successful offeror's sources of supply so that competition can be enhanced in future acquisitions. Contracting officers use the information required by the clause at 252.217–7028 to determine the extent of ''over and above'' work before the work commences. This requirement allows the Government to review the need for pending work before the contractor begins performance.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 26, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–22139 Filed 8–29–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 30, 2002.

Title, Form, and OMB Number: Waiver/Remission of Indebtedness Application; DD Form 2789; OMB Number 0730–0009.

Type of Request: Reinstatement.

Number of Respondents: 6,000.

Responses per Respondent: 1.

Annual Responses: 6,000.

Average Burden per Response: 2 hours.

Annual Burden Hours: 12,000.

Needs and Uses: Used by current or former DoD civilian employees or military members to request waiver or remission of an indebtedness owed to the Department of Defense. Under 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716, certain debts arising out of erroneous payments may be waived. Under 10 U.S.C. 4837, 6161, and 9837, certain debts may be remitted. Information obtained through this form is used in adjudicating the request for waiver or remission. The referenced United States Code sections on waivers provide for an avenue of relief for individuals who owe debts to the United States that resulted from erroneous payments. Criteria for waiver of a debt includes a determination that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the individual owing the debt or any other person interested in obtaining a waiver. Information obtained through the proposed collection is needed in order to adjudicate the waiver request under the law.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 26, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–22140 Filed 8–29–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Joint Defense Science Board/Air Force Scientific Advisory Board Task Force on the Acquisition of National Security Space Programs will meet in closed session on August 28–29, 2002 at SAIC, Chantilly, VA; and September 18–19, 2002, in Los Angeles, CA. This Task Force will review the acquisition of National Security Space Programs and make recommendations to improve the acquisition of space programs from their initiation to deployment.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will focus on what matters to providing national security advantage to the United States and look at the problem in as holistic a fashion as possible, considering the entire space acquisition process, including industry suppliers as well as government acquirers. The assessment will consider what is happening in the four interconnected sectors of the space business—commercial, civil, intelligence and military. Personnel issues, including numbers, skills, experience and demographics of space professionals (including CAAS and FFRDC personnel) as well as effects of corporate mergers in all these areas may be included. The assessment will also consider all aspects of the government's role in managing and funding space system acquisition—SPO, PEO, Science and Technology, Major Command, Service Headquarters, OSD, NRO, NASA and Congress—to derive insights.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Task Force meetings concern matters listed in 5 U.S.C. § 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Due to critical mission requirements and the short timeframe to accomplish this review (an interim report is due in September), there was insufficient time to provide timely notice required by Section 10(a)(2) of the Federal Advisory Committee Act and Subsection 101–6.105(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR Part 101–6, which further requires publication at least 15 calendar days prior to the first meeting of the Task Force on the Acquisition of National Security Space Programs.

Dated: August 26, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–22141 Filed 8–29–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Unexploded Ordnance (UXO) will meet in closed session on September 26–27, 2002, at SAIC Inc., 4001 N. Fairfax Street, Arlington, VA. This Task Force will review modern technology that can be exploited or developed to reduce the extremely high cost of UXO clean up.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will review and evaluate the Department's ability to exploit modern technology to reduce the extremely high cost of UXO clean up and improve its effectiveness for both contaminated land and water ranges and help accomplish the job in a reasonable time; and science and technologies that can be developed to support and sustain continued live fire training and testing of munitions at ranges across the United States with an acceptable environmental impact.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: August 26, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–22142 Filed 8–29–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Intelligence in Support of War on Terrorism will meet in closed session on September 1718, 2002, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will identify capabilities, technologies and approaches for strengthening intelligence in support of the war against terrorism.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will address capabilities and approaches for achieving early indications and warning of terrorist capabilities and intentions, providing effective operational and tactical intelligence in support of crisis operations against terrorists, and the capability for attribution of attackers, should a terrorist event occur. The Task Force will also consider promising new capabilities facilitated by recent changes in statutes (*e.g.,* Combating Terrorism Act of 2001).

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, this meeting will be closed to the public.

Dated: August 26, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–22143 Filed 8–29–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Threat Reduction Agency; Membership of the Performance Review Board

AGENCY: Department of Defense, Defense Threat Reduction Agency.

ACTION: None.

SUMMARY: This notice announces the appointment of Defense Threat Reduction Agency (DTRA) Performance Review Board (PRB) membership. The publication of the PRB membership is required by 5 U.S.C. 4314(c)(4). The PRB shall provide fair and impartial review of Senior Executive performance appraisals and make recommendations regarding performance ratings and performance awards to the Director, Defense Threat Reduction Agency.

EFFECTIVE DATE: The effective date of service for the appointees of the DTRA PRB is on or about September 12, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Tana Farrell, Resource Management Directorate, 7037675759, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Stop 6201, Ft. Belvoir, Virginia 220606201.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the officials appointed to serve as members of the DTRA PRB are set forth below.

PRB Chair: Mr. Robert L. Brittigan
Member: Mr. Douglas M. Englund
Member: Ms. Ann Bridges Steely.

The following DIRA officials will serve as alternate members of the DTRA PRB:

Mr. Michael Evenson
Dr. Joe Golden
Mr. Richard Gullickson
Dr. Arthur Hopkins
Mr. Myron Kunka
Dr. Don Linger
Mr. Vayl Oxford
Ms. Joan Ma Pierre
Dr. Michael Shore
Dr. Starnes Walker
Dr. Leon Wittwer

Dated: August 26, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–22144 Filed 8–29–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Acceptance of Group Application Under Pub. L. 95–202 and Department of Defense Directive (DoDD) 1000.20 ''Reconsideration: Pursers as Part of the U.S. Civilian Flight Crew and Aviation Ground Support Employees of Transcontinental and Western Air (TWA), Incorporated, Who Served Overseas as a Result of TWA's Contract With the Air Transport Command During the Period February 26, 1942 Through August 14, 1945.''

Under the provisions of section 401, Public Law 95–202 and DoD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has accepted a ''reconsideration'' of whether or not ''pursers'' should be recognized as part of the previously recognized group known as: ''U.S. Civilian Flight Crew and Aviation Ground Support Employees of Transcontinental and Western Air (TWA), Inc., Who Served Overseas as a Result of TWA's Contract with the Air Transport Command During the Period February 26, 1942 through August 14, 1945.'' Persons with information of documentation pertinent to the determination of whether the service of the ''pursers'' should be considered active military service to the Armed Forces of the United States are encouraged to submit such information or documentation within 60 days to the DoD Civilian/Military Service Review Board, 1535 Command Drive, EE-Wing, 3rd Floor, Andrews AFB, MD 20762–7002. Copies of documents or other materials submitted cannot be returned.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–22146 Filed 8–29–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Department of Defense Historical Advisory Committee; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: 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 Committee: Department of Defense Historical Advisory Committee.

Date: October 24, 2002.

Time: 9 a.m. to 4:30 p.m.

Place: U.S. Army Center of Military History, Building 35, 103 Third Avenue, Fort McNair, DC 20319–5058.

Proposed Agenda: Review and discussion of the status of historical activities in the United States Army.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey J. Clarke, U.S. Army Center of Military History, ATTN: DAMH–ZC, 103 Third Avenue, Fort McNair, DC 20319–5058; telephone number (202) 685–2709.

SUPPLEMENTARY INFORMATION: The committee will review the Army's historical activities for FY 2002 and those projected for FY 2003 based upon reports and manuscripts received throughout the period. And the committee will formulate recommendations through the Chief of Military History to the Chief of Staff, Army, and the Secretary of the Army for advancing the use of history in the U.S. Army.

The meeting of the advisory committee is open to the public. Because of the restricted meeting space, however, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend the October 24, 2002 meeting.

Any members of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the committee chairman may allow public presentations or oral statements at the meeting.

Dated: August 13, 2002.

Jeffrey J. Clarke,

Chief Historian.

[FR Doc. 02–22192 Filed 8–29–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Comment Period Extension for the Draft Environmental Impact Statement for the South River, Raritan River Basin, Hurricane and Storm Damage Reduction and Ecosystem Restoration Study, Middlesex County, NJ

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice; Comment period extension.

SUMMARY: By **Federal Register** notice of June 7, 2002 (67 FR 39366) the New York District of the U.S. Army Corps of Engineers (Corps) announced the availability of the Draft Environmental

Impact Statement (DEIS) for the South River, Raritan River Basin, Hurricane and Storm Damage Reduction and Ecosystem Restoration Study. The purpose of the study is to identify a plan that would protect local communities from damages caused by hurricanes and storms, and restore degraded ecosystem structure and function in the South River watershed.

In response to requests to increase the public notice comment period, the Corps finds it appropriate to extend the comment period for an additional 45 days beyond the 22 July 2002 date previously in effect. All interested parties are notified that the comment period of this public notice is hereby extended until 5 September 2002.

DATES: Written comments should be submitted on or before 5 September 2002.

ADDRESSES: Written comments should be submitted to Mark Burlas, Project Wildlife Biologist, Planning Division, U.S. Army Corps of Engineers, New York District, 26 Federal Plaza, New York, New York 10278–0090.

FOR FURTHER INFORMATION CONTACT: Mark Burlas, Project Wildlife Biologist, Planning Division, U.S. Army Corps of Engineers, New York District, 26 Federal Plaza, New York, New York, 10278–0090 at (212) 264–4663.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–22191 Filed 8–29–02; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Federal Flood Control Project for Hunting Bayou, Harris County, TX

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The proposed action to be addressed in the Draft Supplemental Environmental Impact Statement (SEIS) is the reformulation and implementation of a new flood damage reduction plan for the Hunting Bayou Watershed. The project plan reformulation includes a re-analysis of all engineering, economic, and environmental aspects using Department of the Army criteria and guidelines, as well as local engineering and analytical criteria. These studies are being conducted by the Harris County Flood Control District (HCFCD), the local sponsor, in partnership with the U.S. Army Corps of Engineers (USACE) as authorized by Section 211 of the Water Resources Development Act (WRDA) of 1996 (Pub. L. 104–303).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and draft SEIS can be answered by Mr. Enrique Villagomez at (409) 766–3173 or by mail at U.S. Army Corps of Engineers, P.O. Box 1229, Galveston, TX 77553–1229.

SUPPLEMENTARY INFORMATION:

1. *Purpose and Need for Action*—An authorized plan (authorized as part of WRDA 1990) exists to resolve many of the flooding problems along the bayou; however, the local sponsor (HCFCD) no longer supports the previously authorized plan because of the magnitude of the impacts identified adjacent to the channel through Herman Brown Park and downstream. HCFCD believes less intrusive options are available that can selectively address the critical areas of flooding. The purpose of the proposed action is to develop an alternative flood damage reduction plan to the plan authorized in WRDA 1990. The need for the proposed action is to reduce flooding along Hunting Bayou in a manner that is less disruptive to the existing environment versus the authorized plan adjacent to the channel through Herman Brown Park and downstream; that is effective, affordable, and sensitive to the aesthetics of the area; and that is compatible with parks located along the bayou.

2. *Alternatives*—The draft SEIS will address a combination of alternative flood reduction plans, including structural and non-structural measures, and the no action alternative. Mitigation measures for any significant adverse effects on the environment will be identified and incorporated into the alternatives in compliance with various federal and state statutes.

3. *Scoping*—A public scoping meeting was held on June 11, 1998, at the Houston Public Library, Kashmere Gardens Branch. The announcement for the scoping meeting was published in the *Houston Chronicle* on May 12 and 27, 1998. Meeting notices were also mailed to 74 elected officials, government agencies, local organizations, civic groups, the media, businesses, and interested citizens. The purpose of the meeting was to invite and encourage members of the public and jurisdictional government agencies to aid in determining the scope of significant issues to be examined in the proposed SEIS for reformulation of the flood damage reduction plans for the Hunting Bayou Watershed.

4. *Public Involvement During the Project Planning Process*—In addition to the scoping process, several public information meetings have been held to keep the public updated on the studies progress. These meetings consisted of a presentation by HCFCD updating the various activities or plans being considered followed by a question and answer period.

5. Issues that will be addressed in the draft SEIS include potential effects on vegetation and wildlife, water quality, air quality, socioeconomic resources, physical resources, and cultural resources. Other issues may include soils, topography, noise, aesthetics, and recreation.

6. The U.S. Fish and Wildlife Service will provide the Fish and Wildlife Coordination Act Report.

7. A 45-day review period will be allowed for all interested agencies and individuals to review and comment on the draft SEIS. All interested persons are encouraged to respond to this notice and provide a current address if they wish to be contacted about the draft SEIS.

8. *Availability*—The draft SEIS is scheduled to be available for public review in December 2002.

Carolyn E. Murphy,

Chief, Environmental Section.

[FR Doc. 02–22190 Filed 8–29–02; 8:45 am]

BILLING CODE 3710–52–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement, Walla Walla District Aquatic Ecosystem Restoration, Walla Walla River Basin, Oregon and Washington

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Walla Walla District, intends to prepare, in cooperation with the Confederated Tribes of the Umatilla Indiana Reservation (CTUIR), the project sponsor, a Draft Environmental Impact Statement (DEIS). The DEIS will be prepared in conjunction with a study to determine the feasibility of conducting aquatic ecosystem restoration within the Walla Walla River Basin in Oregon and Washington. The Walla Walla River Basin Feasibility Study will concentrate on restoration of fish habitat quality as

its main objective, with primary emphasis placed upon options for increasing flows. Other habitat improvement measures identified during the study will be identified in the DEIS and considered for possible expansion of the scope of the project or for development of future projects. The DEIS will evaluate the environmental effects of alternative actions identified during the study. Specific restoration actions and proposed restoration sites will be identified and evaluated throughout the study process and in the DEIS.

FOR FURTHER INFORMATION CONTACT: Mr. James S. Smith, NEPA Coordinator, Walla Walla District Corps of Engineers, CENWW–PD–E, 201 North Third Avenue, Walla Walla, WA 99362, phone (509) 527–7244 or Mr. Chris Hyland, Project Manager, Walla Walla District Corps of Engineers CENWW–PM, 201 Third Avenue, Walla, Walla, WA 99362, phone (509) 527–7264.

SUPPLEMENTARY INFORMATION: On May 10, 2002, the Corps and CTUIR signed a Feasibility Cost Sharing Agreement, the terms of which provide for the Corps and CTUIR to share equally in the cost of conducting the Feasibility Study and preparing the Feasibility Report and DEIS.

Alternatives being considered for the proposed action include a range of measures to increase flows within the Walla Walla River Basin. The following measures have been identified for initial consideration during the Study. Related actions include analysis of effects of measures upon groundwater and analysis of optimum flows for targeted reaches. Actions ultimately proposed for implementation in future years may involve a combination of these or other measures.

1. Water Exchange: Piping Water from Another Drainage

This measure would take water from the Columbia River and transport it to existing irrigation delivery systems. In exchange, less water would be withdrawn from ground and surface waters for use in the irrigation delivery systems.

II. Off-Channel Storage Reservoirs

This potential measure would involve construction of off-channel water storage reservoirs that would store water when it is available and release it during periods of low flow. In exchange, less water would be withdrawn from ground and surface waters.

III. Irrigation Efficiency

Potential measures include improved canal lining systems and consolidation of existing irrigation delivery system to reduce seepage losses, and use of more efficient irrigation application methods.

IV. Water Rights

This measure would include possible acquisition of existing surface and ground water rights issued by the states of Oregon and Washington or transfer into trust for environmental purposes. this effort would be studied for the purposes of ensuring that flows were met at selected sites.

V. Channel Modification

Potential modifications of the Walla Walla River and other Basin river channels may also be studied if the benefits of increased flow are not realized. Such studies may, but will not necessarily include efforts to reduce seepage and the resulting effects on groundwater rejuvenation and/or recharge.

VI. No Action

The no action alternative identifies the ''without'' project condition, or those activities which will occur or continue to occur whether or not the proposed actions ultimately identified in the DEIS are implemented.

The public scoping period will run from August 28 through September 27, 2002. The Corps plans to have formal public meetings during the scoping period, with times and exact dates yet to be determined. The Corps currently plans to have meetings in Milton-Freewater and Mission, Oregon, and in Walla Walla and Dayton, Washington.

The DEIS should be available for public review in April 2004.

Harry L. Cunningham,

MAJ, EN, Deputy District Commander.

[FR Doc. 02–22193 Filed 8–29–02; 8:45 am]

BILLING CODE 3910–GC–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.016A]

Office of Postsecondary Education; Undergraduate International Studies and Foreign Language Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: The Undergraduate International Studies and Foreign Language Program provides grants to strengthen and improve undergraduate instruction in international studies and foreign languages.

Eligible Applicants: (1) Institutions of higher education, (2) combinations of institutions of higher education, (3) partnerships between nonprofit educational organizations and institutions of higher education, and (4) public and private non-profit agencies and organizations, including professional and scholarly associations. applications available: September 13, 2002.

Deadline for Transmittal of Applications: November 4, 2002.

Deadline for Intergovernmental Review: January 3, 2003.

Estimated Available Funds: The Administration has requested $4,700,000 for this program for FY 2003. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process, if Congress appropriates funds for this program.

Estimated Range of Awards: $40,000–$130,000 per year.

Estimated Average Size of Awards: $78,028 per year.

Estimated Number of Awards: 30.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months for grants to single institutions of higher education, and up to 36 months for grants to combinations of institutions of higher education and partnerships.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the narrative to the equivalent of no more than 40 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures and graphs.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-to-two page abstract or the appendices. However, you must include all of the application narrative in responding to the selection criteria.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98 and 99; and (b) the regulations for this program in 34 CFR parts 655 and 658.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

SUPPLEMENTARY INFORMATION: Matching requirement: Under section 604(a)(3) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1124(a)(3), Undergraduate International Studies and Foreign Language Program grantees must provide matching funds in either of the following ways: (a) cash contributions from private sector corporations or foundations equal to one-third of the total project costs; or (b) a combination of institutional and non-institutional cash or in-kind contributions equal to one-half of the total project costs. The Secretary may waive or reduce the required matching share for institutions that are eligible to receive assistance under part A or part B of title III of the HEA, or under title V of the HEA.

Priorities

Competitive Priority

This competition focuses on projects designed to meet the statutory priority contained in section 604(a)(5) of the HEA (20 U.S.C. 1124(a)(5)). That section gives priority to institutions of higher education or combinations of institutions of higher education that either require entering students to have successfully completed at least two years of secondary school foreign language instruction or require each graduating student to earn two years of postsecondary credit in a foreign language or have demonstrated equivalent competence in the foreign language. It also gives priority to two-year degree granting institutions that offer two years of postsecondary credit in a foreign language. We award five points to an application that meets this priority.

Invitational Priority

We are particularly interested in applications that meet the following invitational priority:

Applications from (1) institutions of higher education, (2) combinations of institutions of higher education, (3) partnerships between nonprofit educational organizations and institutions of higher education, and (4) public and private non-profit agencies and organizations, including professional and scholarly associations of higher education that propose educational projects that include activities focused in the targeted world areas of Central and South Asia, the Middle East, Russia, the Independent States of the former Soviet Union, and Africa. These projects should be integrated into the curricula of the home institutions or organizations.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priority a competitive or absolute preference over other applications.

Instructions for Transmittal of Applications

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of this Application

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Undergraduate International Studies and Foreign Language Program— CFDA No. 84.016A is one of the programs included in the pilot project. If you are an applicant under the Undergraduate International Studies and Foreign Language Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Undergraduate International Studies and Foreign Language Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

Note: Please note that due to the Department's end of the fiscal year close out activities, the e-APPLICATION system will be unavailable from October 1 through October 5. It will become available for users again on Monday, October 7.

For Applications and further Information Contact: Christine Corey, Undergraduate International Studies and Foreign Language Program, U.S. Department of Education, International Education and Graduate Programs Service, 1990 K Street, NW., Suite 600, Washington, DC 20006–8521. Telephone: (202) 502–7629 or via Internet: *christine.corey@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Applications and Further Information Contact.*

Individuals with disabilities may obtain a copy of the application package

in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Program Authority: 20 U.S.C. 1124.

Dated: August 26, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–22275 Filed 8–29–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.153A]

Office of Postsecondary Education; Business and International Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: The Business and International Education Program provides grants to institutions of higher education to enhance international business education programs and to expand the capacity of the business community to engage in international economic activities. For FY 2003, we encourage applicants to design projects that focus on the invitational priority in the *Priority* section of this application notice.

Eligible Applicants: Institutions of higher education that enter into agreements with trade associations, business enterprises, or trade organizations that are engaged in international economic activity.

Applications Available: September 17, 2002.

Deadline for Transmittal of Applications: November 4, 2002.

Deadline for Intergovernmental Review: January 3, 2003.

Estimated Available Funds: The Administration has requested $4,720,000 for this program for FY 2003. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process, if Congress appropriates funds for this program.

Estimated Range of Awards: $50,000–$95,000.

Estimated Average Size of Awards: $78,170 per year.

Estimated Number of Awards: 28.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the narrative to the equivalent of no more than 40 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, and graphs.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract or the appendices. However, you must include all of the application narrative in responding to the selection criteria.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The regulations for this program in 34 CFR parts 655 and 661.

SUPPLEMENTARY INFORMATION: Matching requirement: Under title VI, part B, section 613(d) of the Higher Education Act of 1965, as amended, a Business and International Education Program grantee must provide no less than 50 percent of the total cost of the project in each fiscal year. Example: The institution's total costs of the proposed project will be $140,000 per year. The institution may request a grant in the amount of $70,000 or less. The institution must provide the remaining $70,000 in cash or in-kind contributions.

Priority

Invitational Priority

We are particularly interested in applications that meet the following priority.

Applications from institutions of higher education that propose educational projects that include activities focused in the targeted world areas of Central and South Asia, the Middle East, Russia, the Independent States of the former Soviet Union, and Africa. These projects should be integrated into the curricula of the home institution or institutions.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priority a competitive or absolute preference over other applications.

Instructions for Transmittal of Applications

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of this Application

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Business and International Education Program—CFDA No. 84.153A is one of the programs included in the pilot project. If you are an applicant under the Business and International Education Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its

success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Business and International Education Program at: *http://e-grants.ed.gov*.

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

Note: Please note that due to the Department's end of the fiscal year close out activities, the e-APPLICATION system will be unavailable from October 1 through October 5. It will become available for users again on Monday, October 7.

For Applications and further Information Contact: Tanyelle Richardson, Business and International Education Program, U.S. Department of Education, International Education and Graduate Programs Service, 1990 K Street, NW., Suite 600, Washington, DC 20006–8521. Telephone: (202) 502–7626 or via Internet: *tanyelle.richardson@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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Program Authority: 20 U.S.C. 1130a–1130b.

Dated: August 26, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–22276 Filed 8–29–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Management; Notice of Membership of the Performance Review Board

AGENCY: Department of Education.

SUMMARY: The Secretary announces the members of the Performance Review Board (PRB) for the Department of Education for the Senior Executive Service (SES) performance cycle that ended June 30, 2002. Under 5 U.S.C. 4314(c)(1) through (5), each agency is required to establish one or more PRBs.

Composition and Duties

The PRB of the Department of Education is composed of career senior executives, non-career senior executives, and Presidential appointees.

The PRB reviews and evaluates the initial appraisal of each senior executive's performance, along with any comments by that senior executive and by any higher level executive or executives. The PRB makes recommendations to the appointing authority relative to the performance of the senior executive, including recommendations on performance awards. The Department of Education's PRB also makes recommendations on SES pay level adjustments for career senior executives.

Membership

The Secretary has selected the following executives of the Department of Education to serve on the Performance Review Board of the Department of Education for the specified SES performance cycle: Chair: William Leidinger, Carol D'Amico, Gerald Reynolds, James Manning, Maria Ferrier, Thomas Skelly, Philip Link, Steven Winnick, Patricia Guard, John Higgins, and Veronica Trietsch.

FOR FURTHER INFORMATION CONTACT: Althea Watson, Director, Executive Resources Team, Human Resources Services, Office of Management, U.S. Department of Education, room 2E124, FOB–6, 400 Maryland Avenue, SW., Washington, DC 20202–4573. Telephone: (202) 401–2548. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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Access at: *http://www.access.gpo.gov/nara/index.html.*

Dated: August 23, 2002.

Rod Paige,

Secretary of Education.

[FR Doc. 02–22274 Filed 8–29–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Los Alamos Site Operations, National Nuclear Security Administration; Notice of Floodplain Involvement for the Proposed Access Control and Traffic Improvements at Los Alamos National Laboratory, Los Alamos, NM

AGENCY: National Nuclear Security Administration, Office of Los Alamos Site Operations, DOE.

ACTION: Notice of floodplain involvement.

SUMMARY: The Department of Energy (DOE), National Nuclear Security Administration (NNSA), Office of Los Alamos Site Operations proposes to construct and operate access control and traffic improvement measures at Los Alamos National Laboratory (LANL) that would include construction and demolition activities and soil disturbance. The proposed action would include the construction and operation of four access control stations within Technical Areas (TAs) 3, 36, 61 and 48; the closure of four streets leading into TA–3 from West Jemez Road; the construction and operation of two, short by-pass roads around the core portion of TA–3; and intersection improvements at two street intersections located within the core portion of TA–3. Some of the action would occur near canyons with floodplains and wetlands; however, canyons would be bridged over from either side of the canyons and few construction-related activities would take place within the floodplains along the canyon bottoms. Direct and indirect effects to floodplains and wetlands nearby would be minimal. In accordance with 10 CFR Part 1022, DOE has prepared a floodplain/wetland assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain.

DATES: Comments are due to the address below no later than September 16, 2002.

ADDRESSES: Written comments should be addressed to: Elizabeth Withers, Department of Energy, National Nuclear Security Administration, Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544, or submit them to the Mail Room at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Written comments may also be sent electronically to: *ewithers@doeal.gov* or by facsimile to (505) 667–9998.

FOR FURTHER INFORMATION CONTACT: Lloyd Smith, Department of Energy, National Nuclear Security Administration, Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544. Telephone (505) 667–4325, facsimile (505) 667–9998.

For Further Information on General DOE Floodplain Environmental Review Requirements, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, Department of Energy, 100 Independence Avenue, SW., Washington, DC 20585–0119. Telephone (202) 586–4600 or (800) 472–2756, facsimile (202) 586–7031.

SUPPLEMENTARY INFORMATION: NNSA is proposing to improve its capability to meet physical security requirements at LANL by establishing a permanent physical security framework at LANL. Additionally, NNSA also is proposing to improve its street intersections at two locations within LANL to facilitate traffic safety. To meet the needs of the daily DOE and NNSA imposed security conditions at LANL, NNSA is proposing to construct and operate four access control stations and support structures within Technical Areas (TAs) 3, 36, 61 and 48; to construct and operate two, short by-pass roads around the core portion of TA–3; and to close four streets leading into TA–3 from West Jemez Road to vehicle traffic. Additionally, NNSA would also make intersection improvements at two street intersections located within the core portion of TA–3; construct two additional new parking areas and two, short access roads to existing parking lots; and construct a new Radio Shop to replace the existing building, which would have to be demolished to facilitate the construction of the new roadway at the east side of TA–3. Various additional structure would need to be removed, relocated or demolished; these would mostly be non-permanent buildings, with the exception of the aforementioned Radio Shop and the high bay portion of Building 3–40, which would likely need to be demolished as well. Most of the activities would take place along the mesa tops and not within floodplains; no activities are planned to occur in wetlands. Best management practices would be installed to control erosion and storm water runoff. Bridges would be constructed to span over canyons and floodplains.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), NNSA has prepared a floodplain/wetland assessment for this action, which is part of the NEPA EA. The EA (containing the floodplain/wetland assessment) is available by contacting Elizabeth Withers at the previously identified addresses, phone and facsimile numbers. The EA (containing the floodplain/wetland assessment) is also available for review at the DOE Reading Room at the Los Alamos Outreach Center, 1619 Central Avenue, Los Alamos, NM 87544; and the DOE Reading Room at the Zimmerman Library, University of New Mexico, Albuquerque, NM 87131. The NNSA will publish a floodplain statement of findings for this project in the **Federal Register** no sooner than September 16, 2002.

Issued in Los Alamos, NM on August 23, 2002.

Ralph E. Erickson,

Director, U.S. Department of Energy, National Nuclear Security Administration, Los Alamos Site Office.

BILLING CODE 6450–01–P

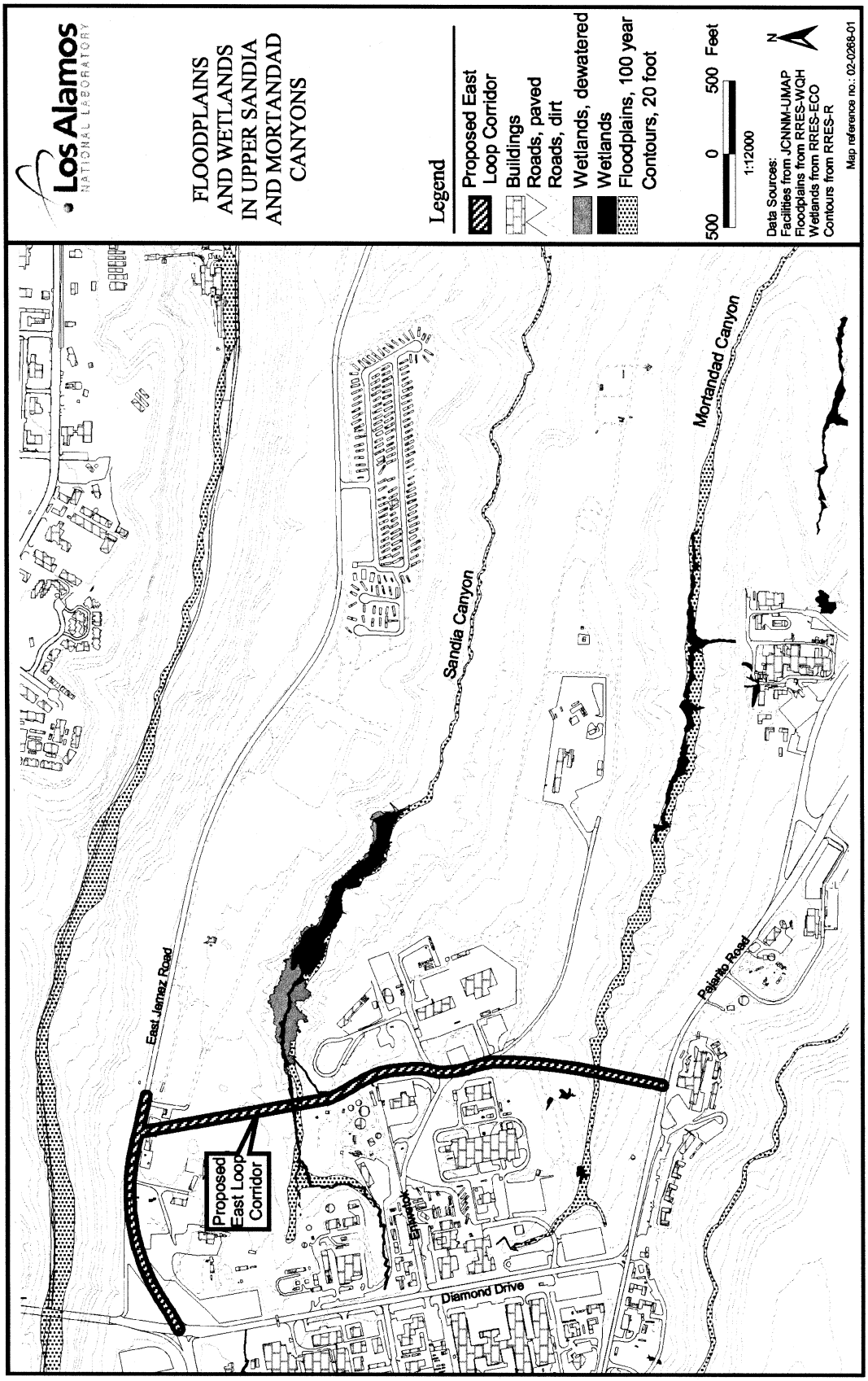

Figure 1. Floodplains and wetlands in upper Sandia and Mortandad Canyons.

[FR Doc. 02–22184 Filed 8–29–02; 8:45 am]

BILLING CODE 6450–01–C

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–28: Division of Nuclear Physics Outstanding Junior Investigator Program

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Division of Nuclear Physics of the Office of Science (SC), U.S. Department of Energy (DOE), invites grant applications for support under the Outstanding Junior Investigator Program in nuclear physics. The purpose of this program is to support the development of individual research programs of outstanding scientists early in their careers. Applications should be from tenure-track faculty who are currently involved in experimental or theoretical nuclear physics research or engaged in research associated with the U.S. nuclear data program and should be submitted through a U.S. academic institution.

DATES: To permit timely consideration of awards in Fiscal Year 2003, formal applications submitted in response to this notice must be received by November 6, 2002.

ADDRESSES: We encourage you to submit formal applications in response to this solicitation electronically through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/.* IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. Applications must be submitted through IIPS in PDF format by an authorized institutional business official. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@e-center.doe.gov* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html.*

If you are unable to submit the application through IIPS, formal applications may be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64/ Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290, ATTN: Program Notice 02–28.

When submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant, the following address must be used: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–28.

FOR FURTHER INFORMATION CONTACT: Dr. Dennis G. Kovar, Director, Division of Nuclear Physics, Office of High Energy and Nuclear Physics, SC–23/ Germantown Building, Office of Science, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290. Telephone: (301) 903–3613. Fax: (301) 903–3833. E-Mail: *dennis.kovar@science.doe.gov*. The full text of Program Notice 02–28 is available via the World Wide Web using the following web address: *http://www.sc.doe.gov/production/grants/grants.html*.

SUPPLEMENTARY INFORMATION: This is the fourth year of an Outstanding Junior Investigator Program in Nuclear Physics. A principal goal of this program is to identify exceptionally talented nuclear physicists early in their careers and to facilitate the development of their research programs. The proposed research is expected to make an important contribution to the vigor of the U.S. Nuclear Physics program.

The DOE expects to make several awards in Fiscal Year 2003; five awards were made in Fiscal Year 2002. The actual number of awards will be determined by the number of excellent applications and the total amount of funds available for this program. It is anticipated that a total of up to $250,000 will be available in Fiscal Year 2003 for funding the program, subject to availability of appropriated funds, and that awards would be for three to five year terms. At the end of the initial term, these grants may be renewed, subject to appropriate external peer review at the time of renewal, as long as the recipient's tenure status is unchanged.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following criteria, listed in descending order of importance as codified at 10 CFR Part 605.10 (d):

1. Scientific and/or technical merit of the project;

2. Appropriateness of the proposed method or approach;

3. Competency of applicant's personnel and adequacy of proposed resources;

4. Reasonableness and appropriateness of the proposed budget.

Additional criteria, which will be considered: Future promise of the investigator, and the resources and interest of the sponsoring institution.

General information about development and submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to the latest version of SC's Application Guide is possible via the Internet at the following web site address: *http://www.sc.doe.gov/production/grants/grants.html*. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications.

The catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on August 21, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–22183 Filed 8–29–02; 8:45 am]

BILLING CODE 6450–02–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–412–000]

KO Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 26, 2002.

Take notice that on August 1, 2002, KO Transmission Company (KO Transmission) tendered for filing as part of its FERC Gas Tariff Original Volume No. 1 the following tariff sheet, proposed to be effective October 1, 2002:

Fourth Revised Sheet No. 147

KO Transmission that these tariff sheets are being filed to comply with the Commission's Order No. 587–O issued on May 1, 2002, in [Docket No. RM96–1–020, 99 FERC 61,146 (2002). In Order No. 587–O, the Commission adopted Version 1.5 of the standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board, formerly the Gas Industry Standards Board (GISB), to be effective October 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–22195 Filed 8–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

August 26, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Project No:* DI02–6–000.

c. *Date Filed:* July 23, 2002.

d. *Applicant:* Richard Gildersleeve.

e. *Name of Project:* Gildersleeve Homestead Project.

f. *Location:* The project is located on Gildersleeve Creek, on Wrangell Island near Wrangell, Alaska, at T. 64 S., R. 84 E., Section 20, Cooper River Meridian. This project will not occupy Federal or Tribal lands.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817 (b).

h. *Applicant Contact:* Richard Gildersleeve, P.O. Box 735, Wrangell, AK 99925, telephone (907) 723–5103.

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton (202) 502–8768, or e-mail address: *henry.ecton@ferc.gov*.

j. *Deadline for filing comments and or motions:* September 27, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and/or interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the docket number (DI02–6–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed Gildersleeve Homestead Project, a run-of-river development, will consist of: (1) A 600-foot-long, 6-inch-diameter pvc pipe; (2) a 580-watt generator, located in a 6-foot by 6-foot powerhouse; (3) a 300-foot-long underground transmission line, leading from the generator to a 24-volt DC battery bank; and (4) appurtenant facilities. It will not be connected to an interstate grid. All power produced will be used on site.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act (FPA), 16 U.S.C. 817(1), requires the Commission to investigate and determine whether or not the project is required to be licensed. Pursuant to section 23(b)(1) of the FPA, a non-federal hydroelectric project must (unless it has a still-valid pre-1920 federal permit) be licensed if it is located on a navigable water of the United States; occupies lands of the United States; utilizes surplus water or water power from a government dam; or is located on a body of water over which Congress has Commerce Clause jurisdiction, project construction occurred on or after August 26, 1935, and the project affects the interests of interstate or foreign commerce. The purpose of this notice is to gather information to determine whether the existing project meets any or all of the above criteria, as required by the FPA.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, and/or Motions to Intervene—Anyone may submit comments, a protest, and/or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, and/or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents:—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', AND/OR ''MOTION TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–22194 Filed 8–29–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7270–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NSPS for Calciners and Dryers at Minerals Industries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Calciners and Dryers in Mineral Industries (40 CFR part 60, subpart UUU), OMB Control Number 2060–0251, expiration date August 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 30, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 0746.05 and OMB Control No. 2060–0251, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20406–0001; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Susan Auby at EPA by phone at (202) 566–1672, by email at *auby.susan@epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR Number 0746.05. For technical questions about the ICR, contact Gregory Fried, Air, Hazardous Waste and Toxics Branch, EPA, by phone (202) 564–7016, or by email at *fried.gregory@epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: NSPS for Calciners and Dryers in Mineral Industries (40 CFR part 60, subpart UUU); OMB Control Number 2060–0251; EPA ICR Number 0746.05; expiration date August 31, 2002.

Abstract: The New Source Performance Standard (NSPS) for Calciners and Dryers in Mineral apply to new, modified and reconstructed calciners and dryers at mineral processing plants that process or produce any of the following minerals and their concentrates or any mixture of which the majority is any of the following minerals or a combination of these minerals: Alumina, ball clay, bentonite, diatomite, feldspar, fire clay, fuller's earth, gypsum, industrial sand, kaolin, lightweight aggregate, magnesium compounds, perlite, roofing granules, talc, titanium dioxide, and vermiculite. Particulate matter is the pollutant regulated under this subpart.

There are several exceptions to applicability to this standard. Feed and product conveyors are not considered part of the affected facility. Facilities subject to NSPS subpart LL, Metallic Mineral Processing Plants are not subject to this standard. There are additional processes and process units at mineral processing plants listed at 40 CFR 60.730(b) which are not subject to the provisions of this subpart.

Owners or operators of the affected facilities subject to this standard must make one-time-only reports including notification of startup, scheduling and results of the initial performance test, notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, and notification of the demonstration of the continuous monitoring system (CMS). Owners or operators are also required to maintain records of the occurrence and duration of any startup, shut down, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Performance tests are needed as these are the Agency's records of a source's initial capability to comply with emissions standards and note the operating conditions under which compliance was achieved. These notifications, reports and records are required, in general, of all sources subject to NSPS.

The monitoring requirements for this NSPS are outlined in 40 CFR 60.734. They are dependant on the types of dryers or calciners used at the facility. Specific calciners and dryers are required to install, calibrate, maintain, and operate a continuous monitoring system. Semiannual reports of excess emissions are required.

This information is being collected to assure compliance with 40 CFR part 60, subpart UUU. Any owner or operator subject to the provisions of this part will maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, as specified in 40 CFR 60.735. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 29, 2001. No comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 19 hours per response. Burden means the total time, effort, or financial resources expended by persons to: generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Calcaneus and dryers at mineral processing plants.

Estimated Number of Responses: 165.

Frequency of Response: Initial and semiannual.

Estimated Total Annual Hour Burden: 6,506 hours.

Estimated Total Annualized Capital and O&M Burden: $115,250.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR Number 0746.05 and OMB Control Number 2060–0251 in any correspondence.

Dated: August 21, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–22231 Filed 8–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7269–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NESHAP for the Portland Cement Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Title: NESHAP for the Portland Cement Manufacturing Industry, OMB Control Number 2060–0416, expiration date August 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 30, 2002.

ADDRESSES: Send comments, referencing EPA ICR Number 1801.03 and OMB Control Number 2060–0416, to the following addresses: Susan Auby, United States Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Susan Auby at EPA by phone at: (202) 566–1672, by E-Mail to: *auby.susan@epa.gov,* or download off the Internet at: *http://www.epa.gov/icr,* and refer to EPA ICR Number 1801.03. For technical questions about the ICR, contact Gregory Fried of the Air, Hazardous Waste and Toxics Branch at: (202) 564–7016, or by E-Mail to: *fried.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: NESHAP for the Portland Cement Manufacturing Industry, OMB Control Number 2060–0416, EPA ICR Number 1801.03, expiration date August 31, 2002. This is a request for extension of a currently approved collection.

Abstract: The Agency has determined that hazardous air pollutants (HAPs) released from portland cement manufacturing facilities can cause reversible or irreversible health effects including carcinogenic, respiratory, nervous system, developmental, reproductive, and/or dermal health effects.

Respondents are owners or operators of portland cement manufacturing plants. The rule applies to each new, existing or reconstructed kiln, in-line kiln/raw mill and greenfield raw material dryer at these facilities, except for kilns and in-line kiln/raw mills that burn hazardous waste. In addition, the rule applies to each new, existing or reconstructed clinker cooler; raw mill; finish mill; raw material, clinker or finished product storage bin; conveying system transfer point; bagging system and bulk loading and unloading system at facilities which are major sources; and to each existing, reconstructed or new brownfield raw material dryer at facilities which are major sources.

Respondents shall submit notifications (where applicable) and reports of initial and repeat performance test results. Plants must develop and implement a startup, shutdown, and malfunction plan and submit semiannual reports of any event where the plan was not followed. Plants must develop and implement an operations and maintenance plan and conduct and report the results of an annual combustion system inspection. Semiannual reports for periods of operation during which the monitoring parameters are exceeded (or reports certifying that no exceedances have occurred) also are required.

General requirements applicable to all NESHAP require records of applicability determinations; test results; exceedances; periods of startups, shutdowns, or malfunctions; monitoring records; and all other information needed to determine compliance with the applicable standard. Records and reports must be retained for a total of 5 years (2 years at the site; the remaining 3 years of records may be retained off site). The files may be maintained on microfilm, on computer or floppy disks, on magnetic tape disks, or on microfiche.

Subpart LLL requires respondents to install (where feasible) continuous opacity monitors and temperature monitoring systems on kilns and in-line kiln raw mills, and total hydrocarbon continuous emission monitors (THC CEMs) on new greenfield kilns, in-line kiln/raw mills and raw material dryers. Owners and operators are also subject to a deferred requirement to install particulate matter (PM) CEMS. Respondents are also required to maintain records of specific information needed to determine that the standards are being achieved and maintained.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 29, 2001. No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 239 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Portland cement manufacturing facilities.

Estimated Number of Respondents: 107.

Frequency of Response: Semi-annually and on occasion.

Estimated Total Annual Hour Burden: 53,181.

Estimated Total Annualized Capital, O&M Cost Burden: $685,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR Number 1801.03 and OMB Control Number 2060–0416 in any correspondence.

Dated: August 21, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–22232 Filed 8–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0002; FRL–7269–8]

Agency Information Collection Activities; Submission of EPA ICR No. 1031.07 (OMB No. 2070–0017) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment (TSCA Section 8(c)) (EPA ICR No. 1031.07; OMB Control No. 2070–0017). The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. On April 16, 2002 (67 FR 18604), with a correction on May 15, 2002 (67 FR 34705), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the single comment it received.

DATES: Additional comments may be submitted on or before September 30, 2002.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–554–1404; e-mail address: *TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. EPA has established a public docket for this ICR under Docket ID No. OPPT–2002–0002, which is available for public viewing at the TSCA Non-confidential Information Center (NCIC), North East Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC, from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays (202–260–7099) until August 14, and afterwards at the OPPT Docket in the EPA Docket Center, EPA West Building Basement Room B102, 1301 Constitution Ave., NW., Washington, DC. The Center is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions:

(1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *oppt.ncic@epa.gov,* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mailcode: 7407M, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OPPT–2002–0002, and

(2) Mail a copy of your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET.

Title: Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment (EPA ICR No. 1031.07; OMB Control No. 2070–0017). This is a request to renew an existing approved collection that is scheduled to expire on August 31, 2002. Under the PRA regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: TSCA section 8(c) requires companies that manufacture, process, or distribute chemicals to maintain records of significant adverse reactions to health or the environment alleged to have been caused by such chemicals. Since section 8(c) includes no automatic reporting provision, EPA can obtain and use the information contained in company files only by inspecting those files or requiring reporting of records that relate to specific substances of concern. Therefore, under certain conditions, and using the provisions found in 40 CFR part 717, EPA may require companies to report such allegations to the Agency.

EPA uses such information on a case-specific basis to corroborate suspected adverse health or environmental effects of chemicals already under review by EPA. The information is also useful to identify trends of adverse effects across the industry that may not be apparent to any one chemical company.

Responses to the collection of information are mandatory (see 40 CFR part 717). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting burden for this collection of information is estimated to range between 0.25 hours and 8.0 hours per response, depending upon the category of respondent. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be

able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers, processors, importers, or distributers in commerce of chemical substances or mixtures.

Frequency of Collection: On occasion.

Estimated No. of Respondents: 7,397.

Estimated Total Annual Burden on Respondents: 29,939 hours.

Estimated Total Annual Costs: $2,613,486.

Changes in Burden Estimates: There is a decrease of 340 hours in the total estimated burden compared with that identified in the information collection request most recently approved by OMB. This decrease reflects minor downward re-estimates in the number of small and large businesses and the average number of employees at those businesses (adjustment). The decrease in the estimates of number of employees in turn decreases the number of estimated allegations. Because allegations trigger response by industry, this results in a decrease in the estimated burden hours and costs.

Dated: August 21, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–22233 Filed 8–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7270–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NSPS for Iron and Steel Plants: Basic Oxygen Process Furnaces

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Iron and Steel Plants: Basic Oxygen Process Furnaces (40 CFR part 60, subparts N and Na); OMB Control Number 2060–0029; EPA ICR Number 1069.07; expiration date September 30, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 30, 2002.

ADDRESSES: Send comments, referencing EPA ICR Number 1069.07 and OMB Control Number 2060–0029 to the following addresses: Susan Abby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Susan Abby at EPA by phone at: (202) 566–1672; by E-mail at *auby.susan@epa.gov*; or download off the Internet at: *http://www.epa.gov/icr* and refer to EPA ICR. For technical questions about the ICR, contact María Malavé in the Office of Compliance at: (202) 564–7027, or via E-mail at *malave.maria@epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: NSPS for Iron and Steel Plants: Basic Oxygen Process Furnaces (40 CFR part 60, subparts N and Na); OMB Control Number 2060–0029; EPA ICR Number 1069.07; expiring September 30, 2002. This is a request for extension of a currently approved collection.

Abstract: The New Source Performance Standards (NSPS) for Primary Emissions from Basic Oxygen Process Furnaces (BOPF) (40 CFR part 60, subpart N) were proposed on June 11, 1973, and promulgated on March 8, 1974. On January 20, 1983, amendments to the Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces, merged with Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities (40 CFR part 60, subpart Na). Subpart Na is applicable to any top-blown BOPF, hot metal transfer station or skimming station for which construction, reconstruction, or modification commenced after January 20, 1983.

Owners and operators of affected sources are subject to the monitoring, recordkeeping and reporting requirements of 40 CFR part 60, subpart A, the General Provisions, unless specified otherwise in the regulation. Owners or operators of the affected facilities described must make one-time-only notifications. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to BOPF shops subject to NSPS subparts N and Na provide information on the operation of the emissions control device and compliance with the mass and visible emission standards. Semiannual reports of measurements that average 10 percent below the average measurements obtained during the most recent performance tests are required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 29, 2001. No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 101 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Basic oxygen process furnace shops at iron and steel plants/furnaces, skimming stations and/or hot metal transfer stations.

Estimated Annual Number of Respondents: 4.

Frequency of Response: On occasion and semiannual.

Estimated Total Annual Hour Burden: 1,012 hours.

Estimated Total Annualized Capital and O&M Cost Burden: $25,794.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through

the use of automated collection techniques to the addresses listed above. Please refer to OMB Control Number 2060–0029 and EPA ICR Number 1069.07 in any correspondence.

Dated: August 21, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–22234 Filed 8–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6632–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–L65403–WA Rating LO, Quartzite Watershed Management Project, Watershed Management Activities including Vegetation Management, Riparian/Wetland Management and Road Management, Colville National Forest, Thomason Sherwood-Cottonwood Creek, Three Rivers Ranger District, Stevens County, WA.

Summary: EPA expressed a lack of objections to the proposal.

ERP No. D–COE–D01001–WV Rating 3, Spruce Mine No.1 Surface Mine Project, Extraction (*i.e.*, Maximum Mineral Recovery Based on Economic Considerations and Landowner Commitments) of High Quality Coal Reserves, Blair, Logan County, WV.

Summary: EPA raised issues regarding the nature and extent of adverse impacts to high quality streams and inadequate information provided on downstream biological resources and water quality. Issues regarding the in-depth examination of only one alternative and a recognized need to develop a more detailed mitigation plan were also expressed.

ERP No. D–COE–G32055–TX Rating LO, Corpus Christi Ship Channel Improvements Project to Provide Navigation Safety and Efficiency of the Deep Draft Navigation System, Corpus Christi and Nueces Bay, Nueces and San Patricio Counties, TX.

Summary: EPA had no objections to the proposed project.

ERP No. D–COE–G39036–TX Rating EC2, North Padre Island Storm Damage Reduction and Environmental Restoration Project, Construction of a Channel between the Laquna Madre and the Gulf of Mexico across North Padre Island referred to as Packery Channel Project, Nueces County, IL.

Summary: EPA expressed environmental concerns and requested additional information or clarification regarding project purpose and need, direct and secondary impacts of increased boater recreation and increased economic development, and overall project economic cost-benefit analysis.

ERP No. D–NRS–G36154–OK Rating EC2, Rehabilitation of Aging Flood Control Dams in Oklahoma, Authorization and Funding, OK.

Summary: EPA expressed environmental concerns and requested additional information regarding impacts to cultural resources, water quality, wetlands and fish and wildlife habitat.

ERP No. DA–COE–A36164–OK Rating LO, Wister Lake and Poteau River, Operation and Maintenance Program for the Present Conservation Pool Level of 478.0 feet and to Provide Mitigation Measures, LeFlore County, OK and Scott County, AR.

Summary: EPA has no objections to the selection of the preferred alternative.

ERP No. DS–COE–E67003–FL Rating EC2, PCS Phosphate—White Springs Mine Continuation Mining Operations, Proposal to Discharge Dredged/Fill Material into 1,858 Acres of Jurisdictional Wetlands, Applications of ''Life of Mine'' Permit, Hamilton County, FL.

Summary: EPA expressed environmental concerns that fine sands and clays dislodged during the mining process or introduced from clay setting areas and restoration activities might clog interstitial spaces of the soils and reduce conductivity of the underlying aquifers that feed tributary creeks. EPA requested timely consultations with FWS on protected species, a long term ground water monitoring program to document ground water conductivity, cumulative impacts on Suwanneee River flows, and more discussion of phosphate mining on subsurface aquifer storage.

Final EISs

ERP No. F–AFS–L65383–ID Hidden Cedar Project, Road Construction and Watershed Restoration, Idaho Panhandle National Forest, St. Joe Ranger District, Benewah, Shoshone, Clearwater and Latah Counties, ID.

Summary: The final EIS adequately discloses the impacts and satisfactorily responds to most of EPA's comments on the draft EIS. Therefore, EPA has no objection to the action as proposed.

ERP No. F–NOA–F39039–IN Indiana Lake Michigan Coastal Program Document, Federal Approval and Implementation, Coastal Zone Management, Lake, Porter and LaPorte Counties, IN.

Summary: EPA had no objection to the action as proposed.

ERP No. F–NOA–K91009–00 Coral Reef Ecosystems of the Western Pacific Region, Fishery Management Plan including Amendments to Four Existing (FMPs), Amendment 7 Bottomfish and Seamount Groundfish Fisheries, Amendment 11 Crustaceans Fisheries, Amendment 5 Precious Corals Fisheries and Amendment 10 Pelagics Fisheries, HI, GU and AS.

Summary: While the FEIS provided substantially more information regarding the potential conflicts with the Ecosystem Reserve and Refuges, EPA has environmental concern that the document still lacks information on the current management of coral reef ecosystem resources in the western Pacific region, and how conflicts among federal agencies regarding these resources will be resolved. EPA requested that a supplemental information document which clarifies these issues be prepared.

ERP No. F–RUS–L08056–AK Southern Intertie Project, Construction and Operation of a new 138kV Transmission Line between the Kenai Peninsula and Anchorage, Right-of-Way Grant, Special-Use-Permit and U.S. Army COE Section 10 and 404 Permit Issuance, Kenai Peninsula to Anchorage, AK.

Summary: While EPA has no objections to the action as proposed. EPA did recommended site-specific surveys of bird movements prior to final design and construction of the project to ensure appropriate mitigation measures (if needed) are identified.

Dated: August 27, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–22238 Filed 8–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6632–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/complianc/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed August 19, 2002 Through August 23, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 220354, Draft EIS, NOA, Northeast Skate Complex Fishery Management Plan, To Implement Management Measures, Magnuson-Stevens Fishery Conservation and Management Act, New England Fishery Management Council, Comment Period Ends: October 15, 2002, Contact: Patricia Kurkul (202) 482–5181.

EIS No. 220355, Draft EIS, NOA, Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP) Amendment 13, Implementation U.S. Exclusive Economic Zone, Along the Atlantic Seaboard from Maine through North Carolina, Comment Period Ends: October 15, 2002, Contact: Patricia A. Kurkul (978) 281–9210.

EIS No. 220356, Final EIS, FRC, CT, NY, Islander East Pipeline Project, Interstate Natural Gas Pipeline Facilities Construction and Operation to provide 285,000 dekatherms per day (Dth/d) of Natural Gas to Energy Markets in Connecticut, Long Island and New York City, New Haven, CT and Suffolk County, NY, Wait Period Ends: September 30, 2002, Contact: Margalie R. Salas (202) 208–2156.

EIS No. 220357, Draft EIS, FRC, CT, NY, Eastern Long Island Extension Project, Construction and Operation of a 175.000 dekatherms per day (Dth/d) of Natural Gas to Energy Markets in Long Island, New York, Docket No. CP02–52–000, Long Island, Suffolk County, NY and New Haven County, CT, Comment Period Ends: October 15, 2002, Contact: Jeffery Shenot (202) 502–8329. This document is available on the Internet at: *http://www.ferc.gov.*

EIS No. 220358, Draft EIS, JUS, CA, Juvenile Justice Campus (JJC) Construction and Operation of a 1,400 Beds and Related Functions Facility, Conditional Use Permit, Fresno County, CA, Comment Period Ends: October 15, 2002, Contact: Ms. Jill Young (202) 353–7302.

EIS No. 220359, Final EIS, BIA, CA, Agua Caliente Indian Reservation Project, Proposed Section 14 Specific Plan and Master Development Plan, Agua Caliente Band of Cahulla Indians, City of Palm Springs, Riverside County, CA, Wait Period Ends: September 30, 2002, Contact: William Allan (916) 978–6043.

EIS No. 220360, Final EIS, AFS, MT, Game Range Project, Ecosystem Health and Productivity Improvements, Fuel Loading Reduction and Game Winter Range Condition Improvements and Maintenance, Lolo National Forest Plain/Thompson Thompson Falls Ranger District, Thompson River to Squaw Creek, Thompson Falls, MT, Wait Period Ends: September 30, 2002, Contact: Frank Yurzyk (406) 826–3821.

EIS No. 220361, Final EIS, BLM, CO, NM, Programmatic EIS—Southern Ute Indian Reservation Oil and Gas Development, Implementation, San Juan Basin, LaPlata, Archuleta, Montezuma Counties, CO and Rio Arriba and San Juan Counties, NM, Wait Period Ends: September 30, 2002, Contact: Walt Brown (970) 385–1372.

EIS No. 220362, Final EIS, DOE, OR, WA, OR, WA, McNary-John Day Transmission Line Project, Construction, Operation and Maintenance of a 79-mile-long 500-Kilovolt-Transmission Line between McNary Substation and John Day Substation, Umatilla and Sherman Counties, OR and Benton and Klickitat Counties, WA, Wait Period Ends: September 30, 2002, Contact: Stacy Mason (503) 230–5455.

EIS No. 220363, Final EIS, IBR, SD, Angostura Unit—(Dam, Reservoir and Irrigation Facilities) Renewal of a Long-Term Water Service Contract, Cheyenne River Basin, Pine Ridge Reservation, Bismarck County, SD, Wait Period Ends: September 30, 2002, Contact: Kenneth Parr (605) 394–9757.

EIS No. 220364, Final EIS, FAA, CA, Santa Barbara Airport Improvements, Extension of Runway Safety Areas for Runway 7/25, Expansion of the Airline Terminal Building, New Air Cargo Building, New Taxiway M, Pavement of Taxiway B, Additional T-Hangers and a New On-Airport Service Road, Funding, COE Section 404 and 10 Permits, Santa Barbara County, CA, Wait Period Ends: September 30, 2002, Contact: David B. Kessler (310) 725–3615.

EIS No. 220365, Draft EIS, DOE, WA, Plymouth Generating Facility, Construct and Operate a 307-megawatt (MW) Natural Gas-Fired, Combined Cycle Power Generation Facility on 44.5 Acre Site, Conditional Use/Special Permit, Benton County, WA, Comment Period Ends: October 15, 2002, Contact: Phil W. Smith (503) 230–3294. This document is available on the Internet at: *http://www.ferc.gov.*

Amended Notices

EIS No. 220253, Draft EIS, AFS, CA, Sirretta Peak Trail Project, To Explore Locations for the Construction of Trail Route Open to Off-Highway Vehicles, New Information Relating to the Sierra Nevada Forest Plan Amendment, Cannell Meadow Ranger District, Sequoia National Forest, Tulare County, CA, Comment Period Ends: September 12, 2002, Contact: Chris Ryan (661) 391–6107. Revision of FR Notice Published on 6/28/2002: CEQ Comment Period Ending 8/12/2002 has been Extended to 9/12/2002.

EIS No. 210305, Draft Supplement, FAA, MN, Flying Cloud Airport, Substantive Changes to Alternatives and New Information, Extension of the Runways 9R/27L and 9L/27R, Long-Term Comprehensive Development, In the City of Eden Prairie, Hennepin County, MN, Comment Period Ends: October 25, 2002, Contact: Glen Orcutt (612) 713–4354. Revision of FR Notice Published on 8/24/2001: CEQ Review Period Ending 8/7/2001 has been extended to 10/25/2002.

EIS No. 220288, Draft EIS, FHW, CA, Willits Freeway Bypass Project, Construction and Operation of a New Segment of U.S. 101, COE Section 404 Permit, NPDES Permit and Endangered Species Act (Incidental Take Permit), City of Willits, Mendocino County, CA, Comment Period Ends: September 9, 2002, Contact: Maiser Khaled (916) 498–5020. Revision of FR Notice Published on 7/12/2002: CEQ Wait Period Ending on 8/26/2002 has been Extended to 9/9/2002.

EIS No. 220348, Final EIS, AFS, UT, Ray's Valley Road Realignment, Proposal to Reduce or Eliminate Adverse Impacts to Watershed and Aquatic Species and Provide Safer Driving Conditions, Uinta National Forest, Spanish Fork Ranger District, Utah County, UT, Wait Period Ends: September 23, 2002, Contact: Renee Flanagan (801) 342–5100. Revision of FR Notice Published on 8/23/2002: Correction to Wait Period from 9/29/2002 to 9/23/2002.

EIS No. 220349, Draft EIS, FHW, MN, IA, Trunk Highway 60 Reconstruction Project, Improvements from 1.8 miles

south of the Minnesota-Iowa Border (120th Street) to Interstate 90 north of the City of Worthington, Funding, COE Section 404 and NPDES Permits, Nobles County, MN and Osceola County, IA, Comment Period Ends: October 8, 2002, Contact: Tamara Cameron (651) 291–6121. Revision of FR notice published on 8/23/2002: Correction to Comment Period from 10–14–2002 to 10–8–2002.

EIS No. 220352, Final EIS, BLM, CA, Northern and Eastern Mojave Planning Area (NEMO), Implementation, California Desert Conservation Area Plan Amendments, Mojave Desert, CA, Wait Period Ends: September 23, 2002, Contact: Edythe Seehafer (760) 252–6021. Revision of FR notice published on 8/23/2002: Correction to Wait Period from 9/29/2002 to 9/23/2002.

EIS No. 220353, Draft Supplement, COE, FL, Coast of Florida Erosion and Storm Effects Study Region III, Construction, Operation and Maintenance, Shore Protection Project, Palm Beach, Broward and Dade Counties, FL, Comment Period Ends: October 8, 2002, Contact: Dale Beter (561) 686–3441. Revision of FR Notice published on 8/23/2002: Correction to Comment Period from 10/14/2002 to 10/8/2002.

Dated: August 27, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–22239 Filed 8–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6632–6]

Gulf of Mexico Offshore Continental Shelf Oil and Gas Extraction National Pollutant Discharge Elimination System General Permit Supplemental Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Intent to prepare a Supplemental Environmental Impact Statement (SEIS) on the proposed reissuance of a National Pollutant Discharge Elimination System General Permit (GP) applicable to oil and gas extraction facilities offshore of Mississippi, Alabama and Florida located in Gulf of Mexico waters that are under EPA Region 4 jurisdiction.

Purpose: Pursuant to 40 CFR 1501.7 and in accordance with section 102(2)(c) of the National Environmental Policy Act (NEPA), EPA has identified the need to prepare a SEIS and therefore issues this Notice of Intent pursuant to 40 CFR 1507.7.

For Further Information, To Submit Comments and To Be Placed on the Project Mailing List Contact: Ms Lena Scott, Environmental Protection Agency—Region 4, Office of Environmental Assessment, 61 Forsyth Street, SW., Atlanta, Georgia 30303, Telephone: (404) 562–9607 or FAX: (404) 562–9598 or E-mail:*scott.lena@epa.gov*.

SUMMARY: EPA intends to prepare the SEIS to evaluate the impacts of issuing a GP for regulating the discharge of pollutants into federal waters of the Gulf of Mexico under Region 4 jurisdiction that result from exploratory drilling, development and completion of productive wells and the production of oil and gas resources. On January 22, 2001, final effluent limitations for synthetic-based drilling fluids (SBF) were promulgated by EPA. SBF along with conventional water based-fluids will now be considered for allowable discharge under a reissued GP. EPA is required to conduct this environmental review because oil and gas production activities are defined as new sources pursuant to 40 CFR 122.29. A consultant under contract to EPA will assist in the preparation of the SEIS.

Need for Action: Regulations (40 CFR 122.28), pursuant to section 402 of the Clean Water Act, authorize EPA to issue a general permit when it is appropriate for a category of point source discharges under the same operating conditions and within a specified geographic area. Based on the present information and the environmental review completed in 1998 for the GP presently in force, primary environmental concerns to be addressed in the SEIS include impacts from pollutant discharges to the marine environment including bottom-dwelling biota and water column biota. Bioaccumulation of pollutants in marine organisms consumed by humans will also be addressed. Based on the industry's interest in deep water areas of the Outer Continental Shelf, the SEIS will emphasize potential impacts to the deep water environment not fully addressed in the 1998 EIS. Absent EPA's reissuance, the existing GP will expire in 2003 and all NPDES permitting would require individual permits for each exploration and production project.

Alternatives: The following proposed alternatives have been defined:

- EPA reissues the GP in its present form.
- EPA revises the GP to include SBF.
- EPA withholds issuance of any general permit and the existing GP expires in 2003 (the No Action Alternative).

Scoping: EPA is requesting written comments from federal, state and local governments, industry and the general public on the need for action, scope of the alternatives, and environmental and economic concerns. The scoping process will last for 45 days beginning with the availability of this Notice.

Estimated Date of Draft SEIS Release: February 2003.

Responsible Official: J. I. Palmer, Jr., Regional Administrator, Environmental Protection Agency, Region 4.

Dated: August 26, 2002.

Anne Norton Miller,

Director, OFA.

[FR Doc. 02–22240 Filed 8–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0194; FRL–7197–6]

EPA Pesticide Program Dialogue Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs will hold a public meeting of the Pesticide Program Dialogue Committee (PPDC) on September 17 and 18, 2002. An agenda will be available by September 13, 2002, and posted on EPA's Web site at *www.epa.gov/pesticides/ppdc/*. An agenda is being developed and will include the following topics: Alternative, i.e., non-animal or reduced-animal testing (with special focus on acute toxicity testing), pesticide program resource allocations and expenditures, follow-up reports from the May 2002, PPDC meeting, and other topics.

DATES: The meeting will be held on Tuesday, September 17, 2002, from 9 a.m. to 5 p.m., and on Wednesday, September 18, 2002, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Old Town Holiday Inn Select, 480 King Street, Carlyle Conference Room fifth floor, Alexandria, VA. Telephone: (703) 549–6080.

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach, Office of Pesticide Programs (7501C), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308–4775; fax

number: (703) 308–4776; e-mail address: *fehrenbach.margie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however be of interest to persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) (Public Law 104–170) of 1996.

Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. To access information about PPDC, go directly to the Home Page for EPA's Office of Pesticide Programs at *http://www.epa.gov/pesticides/ppdc/*.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0194. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

The PPDC is composed of 42 members appointed by EPA's Deputy Administrator. Committee members were selected from a balanced group of participants from the following sectors:

1. Pesticide user, grower, and commodity groups.
2. Industry and trade associations.
3. Environmental/public interest and farmworker groups.
4. Federal, State and tribal governments.
5. Public health organizations.
5. Animal welfare and academia.

PPDC was established to provide a public forum to discuss a wide variety of pesticide regulatory development and reform initiatives, evolving public policy, program implementation issues, science policy issues associated with evaluating, and reducing risks from use of pesticides.

III. How Can I Participate in this Meeting?

The PPDC meetings and workshops are open to the public under section 10(a)(2) of the Federal Advisory Committee Act (FACA), Public Law 92–463. Outside statements by observers are welcome. Oral statements will be limited to 3 to 5 minutes, and it is preferred that only one person per organization present the statement. Any person who wishes to file a written statement may do so before or after the meeting. These statements will become part of the permanent record and will be available for public inspection at the address in Unit I.B.2.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 26, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 02–22219 Filed 8–27–02; 4:06 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0206; FRL–7193–9]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 69493–EUP–R from Interregional Research Project Number 4 (IR–4) requesting an experimental use permit (EUP) for the biochemical pesticide sodium metasilicate which is mixed with other ingredients to prepare the end use product known as TRIAD, which contains 2.41% sodium metasilicate. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket ID number OPP–2002–0206, must be received on or before September 30, 2002.

ADDRESSES: Comments and data may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0206 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Raderrio Wilkins, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–1259; e-mail address: *wilkins.raderrio@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to the State of California. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document,

on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0206. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0206 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: *opp-docket@epa.gov*, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0206. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

IR–4, Technology Center of New Jersey, Rutgers University, 681 U.S. Highway #1 South, New Brunswick, NJ 08902–3390, has requested an EUP for the biochemical pesticide sodium metasilicate for a 2 year period, commencing January 1, 2002 to January 1, 2004. The objective of this EUP is to evaluate the use of TRIAD to control insects and diseases of selected fruits and vegetables in a large geographical area on many important minor crops. A total of 3,800 acres per year were proposed to be treated with 15,390 pounds of the active ingredient per year. IR–4 proposed testing in the State of California. Proposed crop treatment sites include almond, citrus, cole crops, fruit, stone, grape, and vegetable, leafy.

III. What Action is the Agency Taking?

Following the review of the IR–4 application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is under 40 CFR part 172, subpart A.

List of Subjects

Environmental protection, Experimental use permits.

Dated: August 16, 2002.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 02–22091 Filed 8–29–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7270–8]

Commonwealth of Pennsylvania's Submission of a Substantial Program Revision to Its Authorized National Pollutant Discharge Elimination System (NPDES) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revision, public comment period, and opportunity to request a public hearing.

SUMMARY: The Commonwealth of Pennsylvania has submitted

amendments to its Water Quality Regulations (adopted by the Environmental Quality Board on June 20, 2000) (hereinafter the Pennsylvania Regulation Revisions) to EPA for review as a revision to the Commonwealth's authorized National Pollutant Discharge Elimination System (NPDES) program pursuant to section 402 of the Clean Water Act (CWA). The Commonwealth has made significant revisions to 25 PA Code Chapters 92 and 97 of the Water Quality Regulations and EPA has determined that the Pennsylvania Regulation Revision constitutes a substantial revision to Pennsylvania's authorized NPDES program. Accordingly, EPA requests public comment and is providing notice of an opportunity to request a public hearing on the submitted regulation. EPA seeks public comments on whether to approve or disapprove the revisions to Pennsylvania's authorized NPDES program, and a public hearing will be held if there is significant public interest based on the requests received. Copies of the Pennsylvania Regulation Revisions are available for public inspection as indicated in the **ADDRESSES** section.

DATES: Comments and/or requests for public hearing must be received before October 15, 2002.

ADDRESSES: Comments should be addressed to Evelyn MacKnight, U.S. EPA, Region III, 3WP11, 1650 Arch Street, Philadelphia, Pennsylvania, 19103.

FOR FURTHER INFORMATION CONTACT: Evelyn MacKnight, (215) 814–5717, at the above address. Those who are deaf or hearing-impaired may use the Relay Service at 1–800–654–5984 and request that the call be relayed.

SUPPLEMENTARY INFORMATION: Section 402 or the Federal Clean Water Act (CWA) created the NPDES program under which the Administrator of EPA may issue permits for the discharge of pollutants into the water of the United States under conditions required by the CWA. Section 402(b) allows States to assume NPDES program responsibilities upon approval by EPA. On June 30, 1978, Pennsylvania received approval from EPA to assume the NPDES program; the Commonwealth then received the authority to administer the following NPDES programs on the dates indicated: the Federal Facilities Program on June 30, 1978; and the General Permits program on August 2, 1991.

EPA has issued a regulation in 40 CFR part 123 that establishes the requirements for NPDES State Programs. Section 123.62 establishes procedures for revision of authorized NPDES State Programs. Under § 123.62(a), a State may initiate a program revision and must keep EPA informed of proposed modifications to its regulatory authority. On 12/20/2000, the Commonwealth of Pennsylvania submitted its regulation revisions for formal review by EPA. Under § 123.62(b)(1), a State program submittal is complete whenever the State submits such documents as EPA determines are necessary under the circumstances. In this instance, EPA has determined that the State submission is complete. Section 123.62(b)(2) requires EPA to issue public notice by publication in the **Federal Register** and in newspapers having Statewide coverage, and to provide a period of public comment of at least 30 days whenever the Agency determines that a program revision is substantial. EPA has determined that the Pennsylvania Regulation Revision, which is described below, constitutes a substantial revision to Pennsylvania's NPDES program. Section 123.62(b)(2) also requires EPA to hold a public hearing regarding the proposed revision ''if there is significant public interest based on requests received.''

The Pennsylvania Regulation Revision includes amendments to 25 PA Code Chapters 92 and 97 of the Water Quality Regulations. These revisions were part of the Commonwealth's Regulatory Basics Initiative (RBI), which was a process to evaluate regulations considering several factors including whether requirements are more stringent than Federal regulations without good reason; impose economic costs disproportionate to the environmental benefit; are prescriptive rather than performance-based; inhibit green technology and pollution prevention strategies; are obsolete or redundant; lack clarity; or are written in a way that causes significant noncompliance.

The revision incorporates by reference portions of Federal regulations found at 40 CFR parts 122, 124 and 125 (relating to EPA administered permit programs; the National Pollutant Discharge Elimination System; procedures for decision making; and criteria and standards for the National Pollutant Discharge Elimination System), so that it is now necessary for permittees and others to refer to Chapter 92 and the Federal regulations. Other significant revisions include the addition of regulations addressing Concentrated Animal Feeding Operations (CAFOs), which are significant contributors to water quality impairments due to nutrients and excessive erosion and sediment. The Commonwealth also significantly revised applicable regulations regarding Sanitary Sewer Overflows (SSOs) and Combined Sewer Overflows (CSOs). Pennsylvania also incorporates requirements of erosion and sediment control for stormwater and construction activities into NPDES permits.

At the close of the public comment period (including, if necessary, the public hearing), the EPA Regional Administrator, with the concurrence of the Associate General Counsel for Water and the Director of the Office of Compliance and Enforcement, will decide whether to approve or disapprove the Pennsylvania Regulation Revision as a revision to the Pennsylvania NPDES program. The decision to approve or disapprove will be based upon satisfying or meeting the requirements of the CWA and 40 CFR part 123. The Pennsylvania Regulation Revision may be reviewed by the public from 8 a.m. to 4 p.m. at the EPA office in Philadelphia, Monday to Friday (excluding holidays), at the address appearing earlier in this notice. Copies of the submittal may be obtained for a fee by contacting Evelyn MacKnight as indicated in the **ADDRESSES** section.

All comments or objections received by October 15, 2002, as discussed will be considered by EPA before taking final action on the program revision.

Please bring the foregoing to the attention of persons whom you know are interested in this matter. All written comments and question on this matter should be addressed to Evelyn MacKnight at the above address or telephone number.

Dated: August 22, 2002.

Donald S. Welsh,

Regional Administrator, Environmental Protection Agency, Region III.

[FR Doc. 02–22230 Filed 8–29–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Currently, the FDIC is soliciting comments concerning the following collections of information titled: (1) Interagency Biographical and Financial Report; (2) Suspicious Activity Report; and (3) External Audits.

DATES: Comments must be submitted on or before October 29, 2002.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Consumer and Compliance Unit), (202) 898–7453, Legal Division, Room MB–3109, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838; Internet address: *comments @ fdic.gov*].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

1. *Title:* Interagency Biographical and Financial Report.

OMB Number: 3064–0006.

Frequency of Response: On occasion.

Affected Public: All financial institutions.

Estimated Number of Respondents: 2,040.

Estimated Time per Response: 4 hours.

Total Annual Burden: 8,160 hours.

General Description of Collection: The Interagency Biographical and Financial Report is submitted to the FDIC by each individual director or officer of a proposed or operating financial institution applying for federal deposit insurance as a state nonmember bank. The information is used by the FDIC to evaluate the general character of bank management as required by the Federal Deposit Insurance Act.

2. *Title:* Suspicious Activity Report.

OMB Number: 3064–0077.

Form Number: 6710/06.

Frequency of Response: On occasion.

Affected Public: Business, for-profit institutions, and non-profit institutions.

Estimated Number of Respondents: 6,500.

Estimated Time per Response: .60 hours.

Total Annual Burden: 3,900 hours.

General Description of Collection: Part 353 of the FDIC's rules and regulations requires insured nonmember banks to report to the appropriate investigatory and prosecuting authorities and to the FDIC, on a prescribed form, criminal violations of the U.S. Code that involve or affect the banks' affairs.

3. *Title:* External Audits.

OMB Number: 3064–0113.

Frequency of Response: On occasion.

Affected Public: All financial institutions.

Estimated Number of Responses (insured institutions with assets of $500 million or more and insured institutions with assets less than $500 million): 17,694.

Estimated Time per Response: insured institutions with assets of $500 million or more—32 hours ; insured institutions with assets less than $500 million—3/4 hours.

Total Annual Burden: 44,430 hours.

General Description of Collection: Section 36 of the Federal Deposit Insurance Act imposes auditing and reporting requirements on insured depository institutions which have total assets of $500 million or more. An interagency policy statement extended those requirements on a voluntary basis to institutions with less than $500 million.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC, this 27th day of August, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–22281 Filed 8–29–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 23, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Merchants & Manufacturers Bancorporation, Inc., New Berlin, Wisconsin, and Merchants Merger Corp., New Berlin, Wisconsin; to merge with Fortress Bancshares, Inc., Westby, Wisconsin, and thereby indirectly acquire Fortress Bank of Westby, Westby, Wisconsin; Fortress Bank, National Association, Houston, Minnesota; and Fortress Bank of Cresco, Cresco, Iowa.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Sumitomo Mitsui Financial Group, Inc., Tokyo, Japan; to become a bank holding company by acquiring 100 percent of the voting shares of Manufacturers Bank, Los Angeles, California.

In connection with this application, applicant also has applied to acquire SMBC Capital Markets, Inc., New York, New York, and thereby engage in lending activities, pursuant to § 225.28(b)(1) of Regulation Y; acting as a financial or investment advisor, pursuant to § 225.28(b)(6) of Regulation Y; engaging in transactional services for customers, pursuant to § 225.28(b)(7)(v) of Regulation Y; and engaging in investing and trading activities, pursuant to §§ 225.28(b)(8)(ii)(A), (b)(8)(ii)(B); and (b)(8)(ii)(C) of Regulation Y; SMBC Leasing and Finance, Inc., New York, New York, and thereby engage in leasing activities, pursuant to § 225.28(b)(3) of Regulation Y; SMBC Securities, Inc., New York, New York, and thereby engage in agency transactional services for customers, pursuant to §§ 225.28(b)(7)(i), (b)(7)(ii), (b)(7)(iii), and (b)(7)(v) of Regulation Y; Daiwa SB Investments (USA), Ltd., New York, New York, and thereby engage in lending and related activities; financial advisory activities; and investment activities as principal, pursuant to §§ 225.28(b)(2)(vi), (b)(6)(i), and (b)(8)(i) of Regulation Y; and JRI America, Inc., New York, New York, and thereby engage in data processing activities, pursuant to §§ 225.28(b)(14)(i) and (b)(14)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, August 26, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–22203 Filed 8–29–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 13, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. LandMark Financial Holding Company, Sarasota, Florida; to engage *de novo* through LandMark Mortgage of Florida, LP, Sarasota, Florida, and thereby engage in originating, processing, and closing residential mortgage loans for sale in the secondary market, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, August 26, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–22202 Filed 8–29–02; 8:45 am]

BILLING CODE 6210–01–S

OFFICE OF GOVERNMENT ETHICS

Issuance and Revocation of Temporary Post-Employment Waiver

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice; revocation of waiver.

SUMMARY: The Office of Government Ethics is giving notice of the termination, effective in 90 days, of a short-term post-Government employment waiver of certain ''senior employee'' restrictions, which OGE is granting today to a class of employee positions at the Securities and Exchange Commission (SEC).

EFFECTIVE DATE: October 29, 2002.

FOR FURTHER INFORMATION CONTACT: Richard M. Thomas, Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917; telephone: 202–208–8000, extension 1152; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: Pursuant to its authority under 18 U.S.C. 207(c)(2)(C), the Office of Government Ethics today is granting a temporary waiver, effective until November 29, 2002, from the senior employee'' post-Government employment restrictions of 18 U.S.C. 207(c), and consequently also section 207(f), with respect to a class of positions at the SEC. Under 5 CFR 2641.201(d) of OGE's executive branch post-employment regulations, the waiver determination is not required to be published in the **Federal Register**. However, § 2641.201(d)(4) of OGE's regulations does require that OGE publish a notice of revocation in the **Federal Register** at least 90 days prior to the effective date of the termination of any such waiver, which is the purpose of this notice.

The waiver was requested by the designated agency ethics official of the SEC. The waiver pertains to all positions at the Securities and Exchange Commission for which the rate of basic pay, immediately prior to May 19, 2002, had been less than the rate of basic pay payable for level 5 of the Senior Executive Service (SES). On May 19, 2002, the SEC instituted a new ''pay parity plan.'' Such a plan was authorized by Congress in January of 2002, pursuant to Pub. L. 107–123, but was not funded by appropriations until some time later. The new pay plan eliminated the SES at SEC and placed all former SES employees, including many who were below level 5 of the SES, in new pay grades all of which have rates of basic pay greater than that payable for SES level 5. Consequently, a number of employees who had not been ''senior employees'' under section 207(c) immediately became subject to the restrictions of that provision, pursuant to 18 U.S.C. 207(c)(2)(ii). According to information provided by the SEC, this change in rate of basic pay occurred without any change in the duties of the affected employees. Furthermore, the SEC indicated that notice of many of the most important details of the new plan (*e.g.*, amounts of pay) was not provided to affected employees until May 17, 2002, so that employees were not able to plan for any post-employment consequences.

The Securities and Exchange Commission requested a temporary waiver to allow a fair amount of time for new senior employees to make plans and to allow the agency the time to

identify any specific positions for which it may believe that a permanent waiver would be appropriate in the future. The Securities and Exchange Commission cited as precedent the decision of OGE in 1996 to grant a temporary waiver under 18 U.S.C. 207(c)(2)(C) covering all SES level 4 employees in the executive branch who were unexpectedly placed in ''senior employee'' status, without any change in the duties of their positions, under the version of section 207(c)(2)(A)(ii) as then worded, as a result of a pay raise under Executive Order 12984. *See* DO–96–001 (January 4, 1996) (original six month waiver); 61 FR 14326–14328 (April 1, 1996) (notice of forthcoming termination of original six month waiver); DO–96–030 (June 6, 1996) (three month extension of waiver); 61 FR 28908–28910 (June 6, 1996) (notice of extension and revocation of waiver after period of extension); all of which are available on OGE's Web site at *http://www.usoge.gov.*

The Office of Government Ethics agreed that the information provided by the SEC satisfied the two-part test for granting waivers under section 207(c)(2)(C). In order to grant a waiver, the Director of OGE must determine both that the imposition of the restrictions of section 207(c) ''would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions'' and that ''granting the waiver would not create the potential for use of undue influence or unfair advantage.'' 18 U.S.C. 207(c)(2)(C)(i) and (ii). The Office of Government Ethics found the hardship requirement to be satisfied because the information provided by the SEC indicated that the very purpose of the new Congressionally authorized pay plan was to reverse that agency's historical difficulties in recruiting and retaining qualified experts in fields related to the mission of the agency. As OGE provides in its implementing regulations, hardship may be shown by the ''payment of a special rate of pay to the incumbent of the position pursuant to specific statutory authority.'' 5 CFR 2641.201(d)(5)(ii)(A). The Office of Government Ethics also found that the granting of a waiver would not create the potential for undue influence or unfair advantage: the new increase in pay is not accompanied by ''any accretion of duties or responsibilities,'' DO–96–001, and there is no reason to expect that the incumbents at the present time would have any more potential for influence or advantage than they had immediately prior to the pay increase.

Pursuant to 5 CFR 2641.201(d)(4), the effective date of the waiver is the ''date of the Director's written response to the designated agency ethics official indicating that the request for exemption has been granted.'' 5 CFR 2641.201(d)(4). That written response is being issued today. The regulations also specifically state that any waiver ''shall not benefit individuals who terminated senior service prior to the effective date of the exemption.'' *Id.* Consequently, the benefit of the waiver does not extend to any individuals who terminated senior service prior to the date of waiver.

Finally, although the SEC requested that the waiver be effective only until November 19, 2002, OGE is granting a waiver that will extend until November 29, 2002. Under 5 CFR 2641.201(d)(4), the revocation of a waiver cannot be effective until 90 days after the publication in the **Federal Register** of a notice of revocation.

Therefore, pursuant to 5 CFR 2641.201(d)(4), OGE hereby gives notice that the above-referenced post-employment waiver, granted on August 30, 2002, will expire and is revoked effective on November 29, 2002.

Approved: August 26, 2002.

Amy L. Comstock,

Director, Office of Government Ethics.

[FR Doc. 02–22204 Filed 8–29–02; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on September 12–13, 2002

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics will hold its sixth meeting, at which it will discuss, among other things, stem cells, cloning, the patentability of human organisms, commerce in the human body and its parts, genetic enhancement of human beings, and/or international models of regulation of the new biotechnologies (Europe).

DATES: The meeting will take place Thursday, September 12, 2002, from 8:30 a.m. to 4:45 p.m. ET; and Friday, September 13, 2002, from 8:30 a.m. to 12:15 p.m. ET.

ADDRESSES: Hotel Monaco, 700 F Street, NW., Washington, DC 20004

PUBLIC COMMENTS: The meeting agenda will be posted at *http://www.bioethics.gov.* Members of the public may submit written statements for the Council's records. Please submit statements to Ms. Diane Gianelli, Director of Communications (tel. 202/296–4669 or e-mail *info@bioethics.gov*). The public may also express comments during the hour set aside for this purpose, beginning at 4:30 p.m. ET, on Thursday, September 12, 2002. Comments will be limited to no more than five minutes per speaker or organization. Please give advance notice of such statements to Ms. Gianelli at the phone number given above, and be sure to include name, affiliation, and a brief description of the topic or nature of the statement.

FOR FURTHER INFORMATION CONTACT: Diane Gianelli, 202/296–4669, or visit *http://www.bioethics.gov.*

Dated: August 26, 2002.

Dean Clancy,

Executive Director, The President's Council on Bioethics.

[FR Doc. 02–22283 Filed 8–29–02; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02129]

Public Health Disease Surveillance Initiative; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for a grant program for the Delaware Department of Health and Social Services for Public Health Disease Surveillance Initiative.

The purpose of this program is to build an integrated data management system that will allow the sharing of core data elements needed by the State of Delaware to effectively fulfill its responsibilities for the surveillance and reporting of communicable diseases. This program addresses the ''Healthy People 2010'' focus area of Immunization and Infectious Diseases.

B. Eligible Applicant

Assistance is provided only to the Delaware Department of Health and Social Services. No other applications were solicited. Eligibility was limited to the Delaware Department of Health and Social Services because fiscal year 2002 federal appropriations specially directs the CDC to award funds to continue the development of the Delaware Electronic Reporting System (DEERS) to track diseases.

C. Funds

Approximately $791,190 is being awarded in FY 2002. The award will begin on or about August 20, 2002 and will be made for a 12-month budget period within a project period of one year.

D. Where To Obtain Additional Information

For business management technical assistance, contact: Van A. King, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone number 770–488–2751. e-mail address *VKing@cdc.gov.*

For program technical assistance, contact: Michael R. Donnelly, Deputy, Integrated Health Information Systems, Office of the Director, Centers for Disease Control and Prevention, Mail Stop D–68, Atlanta, GA 30333. Telephone number 404–639–7820. e-mail address *MRDonnelly@cdc.gov.*

Dated: August 22, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–22167 Filed 8–29–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement USP01]

Measuring the Impact of Health Messages in United States Soap Operas on Foreign Audiences; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for a grant program for Measuring the Impact of Health Messages in U.S. Soap Operas on Foreign Audiences.

The purpose of this program is to measure the impact of health-related content in U.S. produced television soap operas on foreign audiences and assess how international viewers elicit the meaning of these health messages and how culturally transferable the health content embedded in American soaps might be. This program addresses the ''Healthy People 2010'' focus area of Educational and Community-Based Programs.

B. Eligible Applicants

Assistance is being provided only to Population Communications International (PCI), Studio City, California, based on submission of an unsolicited application. Despite the global reach and viewership of U.S. produced television soap operas, little research has been conducted that investigates international audiences' perceptions of American television soap operas and in particular, the impact health messages contained in American soap operas has on international viewers. As a leading proponent and practitioner of entertainment-education methodology, PCI works with the U.S. television industry to encourage Hollywood television producers to incorporate health and population messages in their programs. PCI also works with partners in developing countries to produce carefully researched and culturally sensitive soap operas and to train selected leaders from developing countries in using television for social change.

C. Availability of Funds

Approximately $187,125 is available in FY 2002. The award will begin on or about August 19, 2002 and will be made for a 12-month budget period within a project period of two years.

D. Where To Obtain Additional Information

Business management technical assistance may be obtained from: Cynthia R. Collins, Lead Grants Management Specialist, International and Territories Acquisition and Assistance Branch, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Rm. 3000, MS/E–09, Atlanta, GA 30341–4146. Telephone: (770) 488–2757. Fax: (770) 488–2688. E-mail: *coc9@cdc.gov.*

For program technical assistance, contact: Christine Galavotti, Behavioral Research Team Leader, Women's Health and Fertility Branch, Division of Reproductive Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, NE., Atlanta, GA 30341–3724. Phone: (770) 488–6401. E-mail: *CGalavotti@cdc.gov.*

Dated: August 24, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–22168 Filed 8–29–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee on Childhood Lead Poisoning Prevention.

Times and Dates: 9 a.m.—4:30 p.m., October 15, 2002; 9 a.m.—4:30 p.m., October 16, 2002.

Place: Hyatt Fisherman's Wharf Hotel, 555 North Point Street, San Francisco, CA 94133, telephone 415/563–1234.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 35 people.

Purpose: The Committee shall provide advice and guidance to the Secretary; the Assistant Secretary for Health; and the Director, CDC, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The Committee shall also review and report regularly on childhood lead poisoning prevention practices and recommend improvements in national childhood lead poisoning prevention efforts.

Matters to Be Discussed: Agenda items include: Updates on Primary Prevention issues, Medicaid Targeted Screening issues, Case Management issues, MMWR Publication Process, Presentations on Milwaukee's Community-Based Environmental Intervention Strategies, National Survey of Lead and Allergens in Housing, and Discussion of Charge for Workgroup Reviewing Evidence of Adverse Effects of Lead. Agenda items are subject to change as priorities dictate.

Opportunities will be provided during the meeting for oral comments. Depending on the time available and the number of requests, it may be necessary to limit the time of each presenter.

Contact Person for More Information: Crystal M. Gresham, Program Analyst, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 1600 Clifton Road, NE., M/S E–25, Atlanta, Georgia 30333, telephone 404/498–1431, fax 404/498–1444.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 26, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–22169 Filed 8–29–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC): Correction

ACTION: Notice; correction.

TIMES AND DATES: 8:30 a.m.–5 p.m., September 11, 2002. 8:30 a.m.–3:30 p.m., September 12, 2002.

SUMMARY: The Clinical Laboratory Improvement Advisory Committee published a notice in the **Federal Register** of August 20, 2002, announcing a meeting. The location of the meeting has been changed.

Correction

In the **Federal Register** of August 20,2002, Volume 67, Number 161, Notice, Page 53950, ''Place'' should read: *Place:* Atlanta Marriott Century Center, 2000 Century Boulevard, NE., Atlanta, Georgia. Telephone: 404/325–0000.

FOR FURTHER INFORMATION CONTACT: Rhonda Whalen, 770/488–8042.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 26, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–22170 Filed 8–29–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, date October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 67 FR 42268–71, dated June 21, 2002) is amended to centralize contract and procurement functions within the Procurement and Grants Office (PGO), Office of Program Services, Centers for Disease Control and Prevention, and restructure PGO.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the functional statement for the *Office of the Director (CA581), Procurement and Grants Office (CA58), Office of Program Services (CA5)*, and insert the following:

(1) Provides leadership and guidance in all areas of Procurement and Grants Office (PGO) activities; (2) provides technical and managerial direction for the development of CDC-wide policies, procedures, and practices in the acquisition, assistance, and materiel management areas; (3) participates with senior management in program planning, policy determinations, evaluations, and decisions concerning acquisition, assistance, and materiel management; (4) provides direction for award, administration, measures of effectiveness and termination of contracts, purchase orders, grants, and cooperative agreements; (5) maintains a continuing review of CDC-wide acquisition, assistance management, and materiel management operations to assure adherence to laws, policies, procedures, and regulations; (6) maintains liaison with HHS, GSA, and other Federal agencies on acquisition, assistance, and materiel management policy, procedure, and operating matters; (7) provides administrative services and direction for budget, property, travel, and personnel of the PGO; (8) processes data for and maintains the contract information system for CDC and HHS; (9) provides technical and managerial direction for the development, implementation and maintenance of the Integrated Contracts Expert (ICE) System on an CDC-wide basis; (10) provides administrative support activities for training and development of all PGO employees; (11) operates CDC's Small and Disadvantaged Business Program and provides direction and support to various other socioeconomic programs encompassing the acquisition and assistance activities; (12) provides cost advisory support to acquisition and assistance activities with responsibility for initiating requests for audits and evaluations, and providing recommendations to contracting officer or grants management officer; (13) as required, participates in negotiations with potential contractors and grantees, developing overhead rates for profit and nonprofit organizations, and provides professional advice on accounting and cost principles in resolving audit exceptions as they relate to the acquisition and assistance processes; (14) provides information technology support with responsibility for planning, budgeting, designing, developing, coordinating, monitoring, and implementing IT projects, activities, and initiatives; (15) develops and implements organizational strategic planning goals and objectives.

Delete the title and functional statement for *Contracts Management Branch (Pittsburgh) (CA583)* and insert the following:

Acquisition and Assistance Field Branch (CA583). (1) Plans, directs, and conducts the acquisition of non-personal services, supples, equipment, research and development, studies, and data collection for NIOSH, NCHS, and other CIOs as directed by PGO management through a variety of contractual mechanisms (competitive and non-competitive); (2) plans, directs, and conducts assistance management activities for NIOSH, NCHS, and other CIOs through the awards of grants and cooperative agreements (competitive and non-competitive); (3) reviews statements of work and assistance applications from a management point of view for conformity to laws, regulations, and policies, and negotiates and issues contract, grant, and cooperative agreement awards; (4) provides continuing surveillance of financial and administrative aspects of acquisition and assistance supported activities to assure compliance with appropriate HHS and CDC policies; (5) gives technical assistance, where indicated, to improve the management of acquisition and assistance supported activities and responds to requests for management information from Officer of Director, headquarters, regional staffs, NIOSH, NCHS, and the public; (6) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (7) provides for the collection and reporting of business management and programmatic data, and analyzes and monitors business management data on grants and cooperative agreements; (8) assures that contractor and grantee performance is in

accordance with contractual and assistance commitments; (9) provides leadership, direction, procurement options and approaches in developing specification/statements of work and contract awards; (10) plans, directs, coordinates, and conducts the grants management functions and processes in support of assistance awards, including cooperative agreements, discretionary grants, block grants, and formula grants, to State and local governments, universities, colleges, research institutions, hospitals, and other public and private organizations, small businesses, and minority- and/or women-owned businesses for NIOSH, NCHS, and other CIOs as directed by PGO management; (11) participates with top program management in program planning, policy determination, evaluation, and directions concerning acquisition and assistance strategies and execution; (12) maintains Branch's official contract and assistance files; (13) maintains a close working relationship with NIOSH, NCHS, and other CIO components in carrying out their missions; (14) establishes Branch goals, objectives, and priorities and assures their consistency and coordination with the overall objectives of PGO.

Delete the title and functional statement for the *Grants Management Branch (CA586)* and insert the following:

Acquisition and Assistance Branch B (CA586). (1) Plans, directs, and conducts the acquisition of non-personal services, supplies, equipment, research and development, studies, and data collection for CDC through a variety of contractual mechanisms (competitive and non-competitive); (2) plans, directs, and conducts assistance management activities for CDC through the awards of grants and cooperative agreements (competitive and non-competitive); (3) reviews statements of work and assistance applications from a management point of view for conformity to laws, regulations, and policies, and negotiates and issues contract, grant and cooperative agreement awards; (4) provides continuing surveillance of financial and administrative aspects of acquisition and assistance supported activities to assure compliance with appropriate HHS and CDC policies; (5) gives technical assistance, where indicated, to improve the management of acquisition and assistance supported activities and responds to requests for management information from Office of Director, headquarters, regional staffs, CDC program offices and the public; (6) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (7) provides for the collection and reporting of business management and programmatic data, and analyzes and monitors business management data on grants and cooperative agreements; (8) assures that contractor and grantee performance is in accordance with contractual and assistance commitments; (9) provides leadership and guidance to CDC project officers and program officials; (10) provides leadership, direction, procurement options and approaches in developing specifications/statements of work and contract awards; (11) plans, directs, coordinates, and conducts the grants management functions and processes in support of assistance awards, including cooperative agreements, discretionary grants, block grants, and formula grants, to State and local governments, universities, colleges, research institutions, hospitals, and other public and private organizations, small businesses, and minority- and/or women-owned businesses for CDC; (12) participates with top program management in program planning, policy determination, evaluation, and directions concerning acquisition and assistance strategies and execution; (13) maintains Branch's official contract and assistance files; (14) maintains a close working relationship with CDC program office components in carrying out their missions; (15) establishes Branch goals, objectives, and priorities and assures their consistency and coordination with the overall objectives of PGO.

Delete the title and functional statement in their entirety for the *Contracts Management Activity (Hyattsville (CA587).*

Delete the title and functional statement for the *Contracts Management Branch (Atlanta) (CA588)* and insert the following:

Acquisition and Assistance Branch A (CA588). (1) Plans, directs, and conducts the acquisition of non-personal services, supplies, equipment, research and development, studies, and data collection for CDC through a variety of contractual mechanisms (competitive and non-competitive); (2) plans, directs, and conducts assistance management activities for CDC through the awards of grants and cooperative agreements (competitive and non-competitive); (3) reviews statements of work and assistance applications from a management point of view for conformity to laws, regulations, and policies, and negotiates and issues contract, grant and cooperative agreement awards; (4) provides continuing surveillance of financial and administrative aspects of acquisition and assistance supported activities to assure compliance with appropriate HHS and CDC policies; (5) gives technical assistance, where indicated, to improve the management of acquisition and assistance supported activities and responds to requests for management information from Office of Director, headquarters, regional staffs, CDC program offices and the public; (6) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (7) provides for the collection and reporting of business management and programmatic data, and analyzes and monitors business management data on grants and cooperative agreements; (8) assures that contractor and grantee performance is in accordance with contractual and assistance commitments; (9) provides leadership and guidance to CDC project officers and program officials; (10) provides leadership, direction, procurement options and approaches in developing specifications/statements of work and contract awards; (11) plans, directs, coordinate, and conducts the grants management functions and processes in support of assistance awards, including cooperative agreements, discretionary grants, block grants, and formula grants, to State and local governments, universities, colleges, research institutions,hospitals, and other public and private organizations, small businesses, and minority- and/or women-owned businesses for CDC; (12) participate with top program management in program planning, policy determination, evaluation, and directions concerning acquisition and assistance strategies and execution; (13) maintains Branch official contract and assistance files; (14) maintains a close working relationship with CDC program office components in carrying out their missions; (15) establishes Branch goals, objectives, and priorities and assures their consistency and coordination with the overall objectives of PGO.

Delete the functional statement for the *Construction and Facilities Management Branch (CA589)* and insert the following:

(1) Directs and controls acquisition planning activities to assure total program need are addressed and procurements are conducted in a logical, appropriate, and timely

sequence; (2) plans, directs, and conducts the acquisition of non-personal services, institutional support services, architect/engineering services, construction of new buildings, alterations and renovations, and commodities and equipment in support of CDC facilities, utilizing a wide variety of contract types and pricing arrangements; (3) provides leadership, direction, procurement options and approaches in developing specifications/statements of work and contract awards; (4) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (5) performs simplified acquisition activities in support of CDC program offices; (6) assures that contractor performance is in accordance with contractual commitments; (7) provides leadership and guidance to CDC project officers and program officials; (8) participates with senior program management in program planning, policy determination, evaluation, and directions concerning acquisition strategies and execution; (9) plans, directs, and coordinates activities of the Branch; (10) maintains Branch's official contracts files; (11) maintains a close working relationship with Facilities Planning and Management Office and other CDC components in carrying out their missions; (12) establishes Branch goals, objectives, and priorities and assures their consistency and coordination with overall objectives of PGO.

Delete the title for the *International Contracts and Grants Branch (CA58A)* and insert the *International and Territories Acquisition and Assistance Branch (CA58A).*

Dated: August 23, 2002.

David W. Fleming,

Acting Director, Centers for Disease Control and Prevention.

[FR Doc. 02–22166 Filed 8–29–02; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services.

[Document Identifier: CMS–2567]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Statement of Deficiencies and Plan of Correction and Supporting Regulations in 42 CFR 488.18, 488.26, and 488.28; *Form No.:* HCFA–2567 (OMB# 0938–0391); *Use:* This Paperwork package provides information regarding the form used by the Medicare, Medicaid, and the Clinical Laboratory Improvement Amendments (CLIA) programs to document a health care facility's compliance or noncompliance (deficiencies) with regard to the Medicare/Medicaid Conditions of Participation and Coverage, the requirements for participation for Skilled Nursing Facilities and Nursing Facilities, and for certification under CLIA. This form becomes the basis for both public disclosure of information and CMS certification decisions (including termination or denial of participation); *Frequency:* Biennially and Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 60,000; *Total Annual Responses:* 60,000; *Total Annual Hours:* 120,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Julie Brown, CMS–2567, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 22, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–22147 Filed 8–29–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–107]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality,

utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Determining Third Party Liability (TPL) State Plan Preprint and Supporting Regulations in 42 CFR 433.138; *Form No.:* CMS–R–107 (OMB# 0938–0502); *Use:* The collection of third party liability information results in significant program savings to the extent that liable third parties can be identified and payments can be made for services that would otherwise be paid for by the Medicaid program.; *Frequency:* On occasion; *Affected Public:* Individuals or Households, Federal Government, and State, Local, or Tribal Government; *Number of Respondents:* 1,900,000; *Total Annual Responses:* 1,900,000; *Total Annual Hours:* 301,028.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Julie Brown, CMS-R–107, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 23, 2002.

Julie Brown,

Acting Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–22148 Filed 8–29–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–209 & CMS–R–245]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection *Title of Information Collection:* Medicare and Medicaid Programs; Use and Reporting OASIS Data as Part of the CoPs for HHAs and Supporting Regulations in 42 CFR 484.11 and 484.20; *Form No.:* CMS–R–209 (OMB# 0938–0761); *Use:* HHAs are required to report data from the OASIS as a condition of participation. Specifically, the above named regulations sections provide guidelines for HHAs for the electronic transmission of the OASIS data as well as responsibilities of the State agency or OASIS contractor in collecting and transmitting this information to HCFA. These requirements are necessary to achieve broad-based, measurable improvement in the quality of care furnished through Federal programs, and to establish a prospective payment system for HHAs.; *Frequency:* Reporting/Monthly; *Affected Public:* Business or other-for-profit, Federal Government, State, Local or Tribal Government, Not-for-profit institutions.; *Number of Respondents:* 6,900; *Total Annual Responses:* 85,200; *Total Annual Hours:* 838,408.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare and Medicaid Programs Use of the OASIS as Part of the CoPs for HHAs and Supporting Regulations in Part 484 of 42 CFR.; *Form No.:* CMS–R–245 (OMB# 0938–0760); *Use:* This regulation requires HHAs to use a standard core assessment data set, the OASIS, to collect information and to evaluate adult non-maternity patients. In addition, data from the OASIS will be used for purposes of case mix adjusting patients under home health PPS and will facilitate the production of necessary case mix information at relevant time points in the patient's home heath stay. Modifications have been made to currently approved OASIS forms to allow for the preservation of masking of personally identifiable information for the non-Medicare/non-Medicaid individuals.; *Frequency:* Recordkeeping/Upon patient assessment; *Affected Public:* Business or other-for-profit, Federal Government, State, Local or Tribal Government, Not-for-profit institutions.; *Number of Respondents: 7,100; Total Annual Responses:* 9,510,900; *Total Annual Hours:* 8,013,013.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 22, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–22149 Filed 8–29–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–NEW]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Assessing the Division of Information and Assistance's Customer Service for Written Responses; *Form No.:* CMS–10068 (OMB# 0938–NEW); *Use:* DIA will collect information several times during the FY'02 to assess the customer service provided via written responses. DIA will conduct the written survey through mailings that will accompany actual responses. The envelopes will be sent by Release Clerks so that the actual writer has no knowledge that a particular response is being rated.; *Frequency:* Quarterly; *Affected Public:* Individuals or Households; *Number of Respondents:* 2872;Total Annual Responses: *Total Annual Hours:* 287.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at http://www.hcfa.gov/regs/prdact95.htm, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 20, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–22150 Filed 8–29–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2136–PN]

Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed notice.

SUMMARY: In this proposed notice, we publish our annual update on the proposed allotment we will make available to participating State agencies to pay all, or some portion of, Medicare Part B premium costs for a specified category of eligible low-income Medicare beneficiaries called qualifying individuals (QIs). These proposed expenditures, if adopted, will be made available during Federal fiscal year 2002 (beginning October 1, 2001).

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 29, 2002.

ADDRESSES: In commenting, please refer to file code CMS–2136–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Mail written comments (one original and three copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2136–PN, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays. If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Robert Nakielny, (410) 786–4466.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication at the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland, 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. Members of the public who are interested in reviewing timely public comments are asked to schedule an appointment by calling (410) 786–9994.

I. Background

A. Before the Balanced Budget Act of 1997

Before enactment of the Balanced Budget Act of 1997 (BBA), section 1902(a)(10)(E) of the Social Security Act (the Act) specified that State Medicaid plans must provide Medicare cost-sharing for three groups of eligible low-income Medicare beneficiaries. These three groups include: qualified Medicare beneficiaries (QMBs), specified low-income Medicare beneficiaries (SLMBs), and qualified disabled and working individuals (QDWIs).

A QMB is an individual entitled to Medicare Part A (Hospital Insurance) with an income that falls at or below the Federal poverty level and resources below $4,000 for an individual and $6,000 for a couple. An SLMB is an

individual who meets the QMB criteria, except that his or her income is between a State-established level (at or below the Federal poverty level) and 120 percent of the Federal poverty level. A QDWI is an individual who is entitled to enroll in Medicare Part A, whose income does not exceed 200 percent of the Federal poverty level for a family of the size involved, whose resources do not exceed twice the amount allowed under the Supplementary Security Income program, and who is not otherwise eligible for Medicaid.

The definition of Medicare cost-sharing at section 1905(p)(3) of the Act includes payment for Medicare premiums, although QDWIs only qualify to have Medicaid pay their Medicare part A premiums.

B. After Enactment of the Balanced Budget Act of 1997

Section 4732 of the BBA amended section 1902(a)(10)(E) of the Act to require that States provide for Medicaid payment of all, or a portion of, Medicare Part B (Supplementary Medical Insurance) premiums, during the period beginning January 1998 through December 2002, for selected members of two eligibility groups of low-income Medicare beneficiaries, referred to as qualifying individuals (QIs).

Under section 1902(a)(10)(E)(iv)(I) of the Act, State agencies are required to pay the full amount of the Medicare Part B premium for selected QIs who would be QMBs except that their income level is at least 120 percent but less than 135 percent of the Federal poverty level for a family of the size involved. These individuals cannot otherwise be eligible for medical assistance under the approved State Medicaid plan.

The second group of QIs, under section 1902(a)(10)(E)(iv)(II) of the Act, includes Medicare beneficiaries who would be QMBs except that their income is at least 135 percent but less than 175 percent of the Federal poverty level for a family of the size involved. These QIs may not be otherwise eligible for Medicaid under the approved State plan, but are eligible for a portion of Medicare cost-sharing consisting only of a percentage of the increase in the Medicare Part B premium attributable to the shift of Medicare home health coverage from Part A to Part B (as provided in section 4611 of the BBA).

Section 4732(c) of the BBA also added section 1933 of the Act, which specifies the provisions for State coverage of the Medicare cost-sharing for additional low-income Medicare beneficiaries.

Section 1933(a) of the Act specifies that a State agency must provide, through a State plan amendment, for medical assistance to pay for the cost of Medicare cost-sharing on behalf of QIs who are selected to receive assistance.

Section 1933(b) of the Act sets forth the rules that State agencies must follow in selecting QIs and providing payment for Medicare Part B premiums. Specifically, the State agency must permit all QIs to apply for assistance and must select individuals on a first-come, first-served basis in the order in which they apply. Under section 1933(b)(2)(B) of the Act, when selecting persons who will receive assistance in calendar years after 1998, State agencies must give preference to those individuals who received assistance as QIs, QMBs, SLMBs, or QDWIs in the last month of the previous year, and who continue to be QIs, or become QIs. Under section 1933(b)(4) of the Act, persons selected to receive assistance in a calendar year are entitled to receive assistance for the remainder of the year, but not beyond, as long as they continue to qualify. The fact that an individual is selected to receive assistance at any time during the year does not entitle the individual to continued assistance for any succeeding year. Because the allotment to the States is limited by law, section 1933(b)(3) of the Act provides that the State agency must limit the number of QIs so that the amount of assistance provided during the year is approximately equal to a State's allotment for that year.

Section 1933(c) of the Act limits the total amount of Federal funds available for payment of Part B premiums each fiscal year and specifies the formula to be used to determine an allotment for each State from this total amount. For State agencies that execute a State plan amendment in accordance with section 1933(a) of the Act, a total of $1.5 billion was allocated over 5 years as follows: $200 million in FY 1998; $250 million in FY 1999; $300 million in FY 2000; $350 million in FY 2001; and $400 million in FY 2002.

The Federal matching rate for Medicaid payment of Medicare Part B premiums for QIs is 100 percent for expenditures up to the amount of the State's allotment. No Federal matching funds are available for expenditures in excess of the State's allotment amount. Administrative expenses associated with the payment of Medicare Part B premiums for QIs remain at the 50 percent matching level and may not be taken from the State's allotment.

The amount available for each fiscal year is to be allocated among States according to the formula set forth in section 1933(c)(2) of the Act. The formula provides for an amount to each State agency that is based on each State's share of the Secretary's estimate of the ratio of—(1) An amount equal to the sum of the following:

(a) Twice the total number of individuals who meet all but the income requirements for QMBs, whose incomes are at least 120 percent but less than 135 percent of the Federal poverty level, and who are not otherwise eligible for Medicaid; and

(b) The total number of individuals in the State who meet all but the income requirements for QMBs, whose incomes are at least 135 percent but less than 175 percent of the Federal poverty level, and who are not otherwise eligible for Medicaid;

(2) The sum of all of these individuals under item (1) for all eligible States.

II. Provisions of This Proposed Notice

This notice announces the proposed allotments to be made available to individual States for Federal fiscal year 2002 for the Medicaid payment of Medicare Part B premiums for QIs identified under sections 1902(a)(10)(E)(iv)(I) and (II) of the Act. The formula used to calculate these allotments was described in detail in the January 26, 1998 **Federal Register** (63 FR 3752, 3754) and, except for the incorporation of the latest data, has been used here without changes.

FY 2002 STATE ALLOTMENTS FOR PAYMENT OF PART B PREMIUMS UNDER SEC. 4732 OF THE BBA OF 1997

State	(a) M1 [1]	(b) M2 [2]	(c) 2 × (a) + (b)	State share of (c) (percent)	State FY 2002 ($000) allocation
AK	1	3	5	0.08	$321
AL	25	68	118	1.90	7,584
AR	23	46	92	1.48	5,913
AZ	20	63	103	1.65	6,620

FY 2002 STATE ALLOTMENTS FOR PAYMENT OF PART B PREMIUMS UNDER SEC. 4732 OF THE BBA OF 1997—Continued

State	(a) M1 [1]	(b) M2 [2]	(c) 2 × (a) + (b)	State share of (c) (percent)	State FY 2002 ($000) allocation
CA	114	307	535	8.60	34,383
CO	11	37	59	0.95	3,792
CT	11	55	77	1.24	4,949
DC	3	5	11	0.18	707
DE	5	10	20	0.32	1,285
FL	114	249	477	7.66	30,656
GA	31	69	131	2.10	8,419
HI	3	13	19	0.31	1,221
IA	20	49	89	1.43	5,720
ID	7	18	32	0.51	2,057
IL	38	138	214	3.44	13,753
IN	46	88	180	2.89	11,568
KS	12	33	57	0.92	3,663
KY	19	65	103	1.65	6,620
LA	27	57	111	1.78	7,134
MA	40	85	165	2.65	10,604
MD	26	49	101	1.62	6,491
ME	7	23	37	0.59	2,378
MI	42	127	211	3.39	13,560
MN	27	46	100	1.61	6,427
MO	29	60	118	1.90	7,584
MS	17	44	78	1.25	5,013
MT	5	11	21	0.34	1,350
NC	49	89	187	3.00	12,018
ND	5	13	23	0.37	1,478
NE	9	34	52	0.84	3,342
NH	3	14	20	0.32	1,285
NJ	35	109	179	2.88	11,504
NM	11	28	50	0.80	3,213
NV	7	23	37	0.59	2,378
NY	92	233	417	6.70	26,799
OH	52	167	271	4.35	17,416
OK	14	65	93	1.49	5,977
OR	15	32	62	1.00	3,985
PA	81	187	349	5.61	22,429
RI	7	13	27	0.43	1,735
SC	34	58	126	2.02	8,098
SD	4	13	21	0.34	1,350
TN	37	61	135	2.17	8,676
TX	82	218	382	6.14	24,550
UT	7	16	30	0.48	1,928
VA	45	83	173	2.78	11,118
VT	3	8	14	0.22	900
WA	21	56	98	1.57	6,298
WI	24	87	135	2.17	8,676
WV	11	44	66	1.06	4,242
WY	3	7	13	0.21	835
Total	1374	3476	6224	100.00	400,000

[1] Three-year average (1999–2001) of number (000) of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 120% but less than 135% of the Federal Poverty Level (FPL).

[2] Three-year average (1999–2001) of number (000) of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 135% but less than 175% of the Federal Poverty Level (FPL).

III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this proposed notice, and, if we proceed with a subsequent document, we will respond to the comments in that document.

IV. Regulatory Impact Statement

We have examined the impact of this proposed notice as required by Executive Order 12866 (September 1993, Regulatory planning and review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health

and safety effects; distributive impacts; and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economic effects of $100 million or more annually. We have determined this to be a major rule. It provides $400 million to a specialized category of low-income Medicare beneficiaries.

The RFA requires agencies to analyze options for regulatory relief for small entities. For purposes of the RFA, States and individuals are not considered to be small entities.

This proposed notice would allocate, among the States, Federal funds to provide Medicaid payment for Medicare Part B premiums for QIs. The total amount of Federal funds available during a Federal fiscal year and the formula for determining individual State allotments are specified in the law. Because the formula for determination of State allotments is specified in the statute, there were no other options to be considered. Therefore, we have applied the statutory formula for the State allotments except for the use of specified data. Because the data specified in the law were not available, we have used comparable data from the U.S. Census Bureau on the number of possible QIs in the States, as described in detail in the January 26, 1998 **Federal Register**. Since the statutory formula calls for an estimate of individuals who could qualify for QI status rather than the number of individuals who actually have that status, the exact numbers of those individuals will always be uncertain. These new allotments for FY 2002 incorporate the latest data from the U.S. Census Bureau from 1999 to 2001, as specified in the footnotes to the preceding table.

We believe the statutory provisions that would be implemented in this proposed notice would have a positive effect on States and individuals. Federal funding at the 100 percent matching rate is available for Medicare cost-sharing for Medicare Part B premium payments for selected QIs, and a greater number of low-income Medicare beneficiaries would be eligible to have their Medicare Part B premiums paid under Medicaid.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 100 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act, because we have determined and certify that this proposed notice would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, also requires that agencies assess anticipated costs and benefits before issuing any proposed rule and a final rule preceded by a proposed rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or any the private sector, or $110 million or more. This notice would have no consequential effect on the governments mentioned or on the private sector.

We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism. Because this proposed notice would simply provide notice of funding ceilings, as determined under the statute, we have determined that this proposed notice would not significantly affect the rights, roles, and responsibilities of States.

In accordance with the provisions of Executive Order 12866, this proposed notice with comment period was reviewed by the Office of Management and Budget (OMB).

Authority: Sections 1902(a)(10)(E) and 1933 of the Social Security Act (42 U.S.C. 1396a(a)(10)(E) and 1396x).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: April 28, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: August 26, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–22228 Filed 8–29–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0102]

Agency Information Collection Activities; Announcement of OMB Approval; Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 28, 2002 (67 43633), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0374. The approval expires on August 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: August 23, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–22115 Filed 8–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0159]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Focus Groups as Used by the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by September 30, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Mark L. Pincus, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1471.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Focus Groups as Used by the Food and Drug Administration—New Collection

FDA will collect and use information gathered through the focus group vehicle. This information will be used to develop programmatic proposals, and as such, compliments other important research findings to develop these proposals. Focus groups do provide an important role in gathering information because they allow for a more in-depth understanding of consumers' attitudes, beliefs, motivations, and feelings than do quantitative studies.

Also, information from these focus groups will be used to develop policy and redirect resources, when necessary, to our constituents. If this information is not collected, a vital link in information gathering by FDA to develop policy and programmatic proposals will be missed causing further delays in policy and program development.

In the **Federal Register** of May 24, 2002 (67 FR 36613), the agency requested comments on the proposed collection of information. FDA received four comments, but they did not pertain to the information collection though one heartily supported the use of focus groups as an instrument to help FDA better understand how well respondents comprehend health issues.

FDA estimates the burden for completing the forms for this collection of information as follows:

The total annual estimated burden imposed by this collection of information is 2,884 hours annually.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Center	Subject	No. of Focus Groups per Study	No. of Focus Group Sessions Conducted Annually	Number of Participants per Group	Hours of Duration for Each Group (includes screening)	Total Hours
Center for Biologics Evaluation and Research.	May use focus groups when appropriate.	1	5	9	1.58	71
Center for Drug Evaluation and Research.	Varies (e.g., direct-to-consumer Rx drug promotion, physician labeling of Rx drugs, medication guides, over-the-counter drug labeling, risk communication).	10	100	9	1.58	1,422
Center for Devices and Radiological Health.	Varies (e.g., FDA Seal of Approval, patient labeling, tampons, on-line sales of medical products, latex gloves).	5	25	9	2.08	468
Center for Food Safety and Applied Nutrition.	Varies (e.g., food safety, nutrition, dietary supplements, and consumer education).	8	32	9	1.58	455
Center for Veterinary Medicine.	Varies (e.g., food safety, labeling, cosmetic safety and labeling).	5	25	9	2.08	468
Total		29	187		1.99	3,352

[1]There are no capital costs or operating and maintenance costs associated with this collection.

Annually, FDA projects about 29 focus group studies using 187 focus groups lasting an average of 1.99 hours each. We have allowed burden for unplanned focus groups to be completed so as not to restrict the agency's ability to gather information on public sentiment for its proposals in its regulatory as well as other programs.

Dated: August 26, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–22284 Filed 8–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Publication of OIG Special Advisory Bulletin on Offering Gifts and Other Inducements to Beneficiaries

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: The OIG periodically develops and issues guidance, including Special Fraud Alerts and Special Advisory Bulletins, to alert and inform the industry about potential problems or areas of special interest. This **Federal Register** notice sets forth the recently issued OIG Special Advisory Bulletin addressing the offering of gifts and other inducements to Medicare and Medicaid beneficiaries.

FOR FURTHER INFORMATION CONTACT: Vicki Robinson or Joel Schaer, Office of Counsel to the Inspector General, (202) 619–0335.

SUPPLEMENTARY INFORMATION:

I. Background

We are issuing this Special Advisory Bulletin to help the industry better understand the prohibition on furnishing inducements to Medicare and Medicaid beneficiaries at section 1128A(a)(5) of the Social Security Act. Specifically, the Special Advisory Bulletin addresses the offering of gifts and other inducements to beneficiaries to influence their choice of a Medicare or Medicaid provider, practitioner, or supplier.

II. Special Advisory Bulletin: Offering Gifts and Other Inducements to Beneficiaries (August 2002)

Introduction

Under section 1128A(a)(5) of the Social Security Act (the Act), enacted as part of Health Insurance Portability and Accountability Act of 1996 (HIPAA), a person who offers or transfers to a Medicare or Medicaid beneficiary any remuneration that the person knows or should know is likely to influence the beneficiary's selection of a particular provider, practitioner, or supplier of Medicare or Medicaid payable items or services may be liable for civil money penalties (CMPs) of up to $10,000 for each wrongful act. For purposes of section 1128A(a)(5) of the Act, the statute defines ''remuneration'' to include, without limitation, waivers of copayments and deductible amounts (or any part thereof) and transfers of items or services for free or for other than fair market value. (*See* section 1128A(i)(6) of the Act.) The statute and implementing regulations contain a limited number of exceptions. (*See* section 1128A(i)(6) of the Act; 42 CFR 1003.101.)

Offering valuable gifts to beneficiaries to influence their choice of a Medicare or Medicaid provider [1] raises quality and cost concerns. Providers may have an economic incentive to offset the additional costs attributable to the giveaway by providing unnecessary services or by substituting cheaper or lower quality services. The use of giveaways to attract business also favors large providers with greater financial resources for such activities, disadvantaging smaller providers and businesses.

The Office of Inspector General (OIG) is responsible for enforcing section 1128A(a)(5) through administrative remedies. Given the broad language of the prohibition and the number of marketing practices potentially affected, this Bulletin is intended to alert the health care industry as to the scope of acceptable practices. To that end, this Bulletin provides bright-line guidance that will protect the Medicare and Medicaid programs, encourage compliance, and level the playing field among providers. In particular, the OIG will apply the prohibition according to the following principles:

- *First,* the OIG has interpreted the prohibition to permit Medicare or Medicaid providers to offer beneficiaries inexpensive gifts (other than cash or cash equivalents) or services without violating the statute. For enforcement purposes, inexpensive gifts or services are those that have a retail value of no more than $10 individually, and no more than $50 in the aggregate annually per patient.
- *Second,* providers may offer beneficiaries more expensive items or services that fit within one of the five statutory exceptions: waivers of cost-sharing amounts based on financial need; properly disclosed copayment differentials in health plans; incentives to promote the delivery of certain preventive care services; any practice permitted under the federal anti-kickback statute pursuant to 42 CFR 1001.952; or waivers of hospital outpatient copayments in excess of the minimum copayment amounts.
- *Third,* the OIG is considering several additional regulatory exceptions. The OIG may solicit public comments on additional exceptions for complimentary local transportation and for free goods in connection with participation in certain clinical studies.
- *Fourth,* the OIG will continue to entertain requests for advisory opinions related to the prohibition on inducements to beneficiaries. However, as discussed below, given the difficulty in drawing principled distinctions between categories of beneficiaries or types of inducements, favorable opinions have been, and are expected to be, limited to situations involving conduct that is very close to an existing statutory or regulatory exception.

In sum, unless a provider's practices fit within an exception (as implemented by regulations) or are the subject of a favorable advisory opinion covering a provider's own activity, any gifts or free services to beneficiaries should not exceed the $10 per item and $50 annual limits.[2]

In addition, valuable services or other remuneration can be furnished to financially needy beneficiaries by an independent entity, such as a patient advocacy group, even if the benefits are funded by providers, so long as the independent entity makes an independent determination of need and the beneficiary's receipt of the remuneration does not depend, directly or indirectly, on the beneficiary's use of any particular provider. An example of such an arrangement is the American Kidney Fund's program to assist needy patients with end stage renal disease with funds donated by dialysis providers, including paying for their supplemental medical insurance premiums. (*See, e.g.*, OIG Advisory Opinion No. 97–1 and No. 02–1.)

Elements of the Prohibition

Remuneration. Section 1128A(a)(5) of the Act prohibits the offering or transfer of ''remuneration''. The term ''remuneration'' has a well-established meaning in the context of various health care fraud and abuse statutes. Generally, it has been interpreted broadly to include ''anything of value.'' The definition of ''remuneration'' for purposes of section 1128A(a)(5)—which includes waivers of coinsurance and deductible amounts, and transfers of items or services for free or for other than fair market value—affirms this broad reading. (*See* section 1128A(i)(6).) The use of the term ''remuneration'' implicitly recognizes that virtually any good or service has a monetary value.[3]

The definition of ''remuneration'' in section 1128A(i)(6) contains five specific exceptions:

- *Non-routine, unadvertised waivers of copayments or deductible amounts based on individualized determinations of financial need or exhaustion of reasonable collection efforts.* Paying the premiums for a beneficiary's Medicare Part B or supplemental insurance is *not* protected by this exception.
- *Properly disclosed differentials in a health insurance plan's copayments or*

[1] For convenience, in this Special Advisory Bulletin, the term ''provider'' includes practitioners and suppliers, as defined in 42 CFR 400.202.

[2] The OIG will review these limits periodically and may adjust them for inflation if appropriate.

[3] Some services, such as companionship provided by volunteers, have psychological, rather than monetary value. (*See, e.g.*, OIG Advisory Opinion No. 00–3.)

deductibles. This exception covers incentives that are part of a health plan design, such as lower plan copayments for using preferred providers, mail order pharmacies, or generic drugs. Waivers of Medicare or Medicaid copayments are *not* protected by this exception.

• *Incentives to promote the delivery of preventive care.* Preventive care is defined in 42 CFR 1003.101 to mean items and services that (i) are covered by Medicare or Medicaid and (ii) are either pre-natal or post-natal well-baby services or are services described in the *Guide to Clinical Preventive Services* published by the U.S. Preventive Services Task Force (available online at *http://odphp.osphs.dhhs.gov/pubs/guidecps*). Such incentives may not be in the form of cash or cash equivalents and may not be disproportionate to the value of the preventive care provided. (*See* 42 CFR 1003.101; 65 FR 24400 and 24409.)

• *Any practice permitted under an anti-kickback statute safe harbor* at 42 CFR 1001.952.[4]

• *Waivers of copayment amounts in excess of the minimum copayment amounts under the Medicare hospital outpatient fee schedule.* (*See* section 1128A(i)(6) of the Act; 42 CFR 1003.101.)

In addition, in the Conference Committee report accompanying the enactment of section 1128A(a)(5), Congress expressed its intent that inexpensive gifts of nominal value be permitted. (*See* Joint Explanatory Statement of the Committee of Conference, section 231 of HIPAA, Public Law 104–191.) Accordingly, the OIG interprets the prohibition to exclude offers of inexpensive items or services, and no specific exception for such items or services is required. (*See* 65 FR 24400 and 24410.) The OIG has interpreted inexpensive to mean a retail value of no more than $10 per item or $50 in the aggregate per patient on an annual basis. *Id.* at 24411.

Inducement. Section 1128A(a)(5) of the Act bars the offering of remuneration to Medicare or Medicaid beneficiaries where the person offering the remuneration knows or should know that the remuneration is likely to influence the beneficiary to order or receive items or services from a particular provider. The ''should know'' standard is met if a provider acts with deliberate ignorance or reckless disregard. No proof of specific intent is required. (*See* 42 CFR 1003.101.)

The ''inducement'' element of the offense is met by any offer of valuable (*i.e.*, not inexpensive) goods and services as part of a marketing or promotional activity, regardless of whether the marketing or promotional activity is active or passive. For example, even if a provider does not directly advertise or promote the availability of a benefit to beneficiaries, there may be indirect marketing or promotional efforts or informal channels of information dissemination, such as ''word of mouth'' promotion by practitioners or patient support groups. In addition, the OIG considers the provision of free goods or services to existing customers who have an ongoing relationship with a provider likely to influence those customers' future purchases.

Beneficiaries. Section 1128A(a)(5) of the Act bars inducements offered to Medicare and Medicaid beneficiaries, regardless of the beneficiary's medical condition. The OIG is aware that some specialty providers offer valuable gifts to beneficiaries with specific chronic conditions. In many cases, these complimentary goods or services have therapeutic, as well as financial, benefits for patients. While the OIG is mindful of the hardships that chronic medical conditions can cause for beneficiaries, there is no meaningful basis under the statute for exempting valuable gifts based on a beneficiary's medical condition or the condition's severity. Moreover, providers have a greater incentive to offer gifts to chronically ill beneficiaries who are likely to generate substantially more business than other beneficiaries.

Similarly, there is no meaningful statutory basis for a broad exemption based on the financial need of a category of patients. The statute specifically applies the prohibition to the Medicaid program—a program that is available only to financially needy persons. The inclusion of Medicaid within the prohibition demonstrates Congress' conclusion that categorical financial need is not a sufficient basis for permitting valuable gifts. This conclusion is supported by the statute's specific exception for non-routine waivers of copayments and deductibles based on individual financial need. If Congress intended a broad exception for financially needy persons, it is unlikely that it would have expressly included the Medicaid program within the prohibition and then created such a narrow exception.

Provider, Practitioner, or Supplier. Section 1128A(a)(5) of the Act applies to incentives to select particular providers, practitioners, or suppliers. As noted in the regulations, the OIG has interpreted this element to exclude health plans that offer incentives to Medicare and Medicaid beneficiaries to enroll in a plan. (*See* 65 FR 24400 and 24407.) However, incentives provided to influence an already enrolled beneficiary to select a particular provider, practitioner, or supplier within the plan are subject to the statutory proscription (other than copayment differentials that are part of a health plan design). *Id.* In addition, the OIG does not believe that drug manufacturers are ''providers, practitioners, or suppliers'' for the limited purposes of section 1128A(a)(5), unless the drug manufacturers also own or operate, directly or indirectly, pharmacies, pharmacy benefits management companies, or other entities that file claims for payment under the Medicare or Medicaid programs.

Additional Regulatory Considerations

Congress has authorized the OIG to create regulatory exceptions to section 1128A(a)(5) of the Act and to issue advisory opinions to protect acceptable arrangements. (*See* sections 1128A(i)(6)(B) and 1128D(b)(2)(A) of the Act.) While the OIG has considered numerous arrangements involving the provision of various free goods and services to beneficiaries, for the following reasons the OIG has concluded that any additional exceptions will likely be few in number and narrow in scope:

• Any exception will create the activity that the statute prohibits—namely, competing for business by giving remuneration to Medicare and Medicaid beneficiaries. Moreover, competition will not only result in providers matching a competitor's offer, but inevitably will trigger ever more valuable offers.

• Since virtually all free goods and services have a corresponding monetary value, there is no principled basis under the statute for distinguishing between the kinds of goods or services offered or the types of beneficiaries to whom the goods or services are offered. Attempting to draw such distinctions would necessarily result in arbitrary standards and would undermine the entire prohibition. Congress has provided no further statutory guidance on the bases for distinguishing and evaluating potential exceptions.

Despite these serious concerns, the OIG is considering soliciting public comment on the possibility of regulatory ''safe harbor'' exceptions under section

[4] For example, anti-kickback statute safe harbors exist for warranties; discounts; employee compensation; waivers of certain beneficiary coinsurance and deductible amounts; and increased coverage, reduced cost-sharing amounts, or reduced premium amounts offered by health plans. *See* 42 CFR 1001.952(g), (h), (i), and (k).

1128A(a)(5) for two kinds of arrangements:

• *Complimentary local transportation.* The OIG is considering proposing a new exception for complimentary local transportation offered to beneficiaries residing in the provider's primary catchment area. The proposal would permit some complimentary local transportation of greater than nominal value. However, the exception would not cover luxury or specialized transportation, including limousines or ambulances (but would permit vans specially outfitted to transport wheelchairs). The proposed exception may include transportation to the office or facility of a provider other than the donor; however, such arrangements may implicate the anti-kickback statute insofar as they confer a benefit on a provider that is a potential referral source for the party providing the transportation.

• *Government-sponsored clinical trials.* The OIG may propose a new exception for free goods and services (possibly including waivers of copayments) in connection with certain clinical trials that are principally sponsored by the National Institutes of Health or another component of the Department of Health and Human Services.

The OIG is reviewing its pending proposal (65 FR 25460) to permit certain dialysis providers to purchase Medicare supplemental insurance for financially needy persons in the light of the principles established in this Bulletin.

While the OIG does not expect at this time to propose any additional regulatory exceptions related to unadvertised waivers of copayments and deductibles, the OIG recognizes that such waivers occur in a wide variety of circumstances, some of which do not present a significant risk of fraud and abuse. The OIG encourages the industry to bring these situations to our attention through the advisory opinion process. Instructions for requesting an OIG advisory opinion are available on the OIG Web site at *http://oig.hhs.gov/advopn/index.htm.*

Finally, the OIG reiterates that nothing in section 1128A(a)(5) prevents an independent entity, such as a patient advocacy group, from providing free or other valuable services or remuneration to financially needy beneficiaries, even if the benefits are funded by providers, so long as the independent entity makes an independent determination of need and the beneficiary's receipt of the remuneration does not depend, directly or indirectly, on the beneficiary's use of any particular provider. The OIG has approved several such arrangements through the advisory opinion process, including the American Kidney Fund's program to assist needy patients with end stage renal disease with funds donated by dialysis providers. (*See, e.g.*, OIG Advisory Opinion No. 97–1 and No. 02–1.)

Conclusion

Congress has broadly prohibited offering remuneration to Medicare and Medicaid beneficiaries, subject to limited, well-defined exceptions. To the extent that providers have programs in place that do not meet any exception, the OIG, in exercising its enforcement discretion, will take into consideration whether the providers terminate prohibited programs expeditiously following publication of this Bulletin.

The Office of Inspector General (OIG) was established at the Department of Health and Human Services by Congress in 1976 to identify and eliminate fraud, abuse, and waste in the Department's programs and to promote efficiency and economy in departmental operations. The OIG carries out this mission through a nationwide program of audits, investigations, and inspections.

The Fraud and Abuse Control Program, established by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), authorized the OIG to provide guidance to the health care industry to prevent fraud and abuse and to promote the highest level of ethical and lawful conduct. To further these goals, the OIG issues Special Advisory Bulletins about industry practices or arrangements that potentially implicate the fraud and abuse authorities subject to enforcement by the OIG.

Dated: August 8, 2002.

Janet Rehnquist,

Inspector General.

[FR Doc. 02–22124 Filed 8–29–02; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4736–N–12]

Notice of Proposed Information Collection for Public Comment—Lease Requirements, Recordkeeping

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 29, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Lease Requirements—24 CFR 966.4, Recordkeeping.

OMB Control Number: 2577–0006.

Description of the need for the information and proposed use: HUD regulations 24 CFR 966.4 prescribe the provisions that shall be incorporated in leases by public housing agencies (PHAs) for dwelling units assisted under the U.S. Housing Act of 1937 in projects owned by or leased to PHAs to the tenants. This recordkeeping requirement imposed upon PHAs by HUD regulations and associated information incidental to PHAs' day-to-day operations as landlords of rental housing. If these minimal requirements were not imposed, the Federal Government would have no assurance that PHAs were adopting leases consistent with the law and regulations

and no assurance that tenants were being provided proper access to the PHA's grievance procedure.

Agency form numbers, if applicable: None.

Member of affected public: State or Local Government; individuals or households.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 3,330 responses, one-time for new and modified leases, 48 average hours per response, 158,400 hours total recordkeeping burden.

Status of the proposed information collection: Reinstatement, without change.

Authority: Section 3506 of the paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 26, 2002.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 02–22159 Filed 8–29–02; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4679–N–04]

Reduction in Certain FHA Multifamily Mortgage Insurance Premiums

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice lowers the mortgage insurance premiums (MIPs) for certain Federal Housing Administration (FHA) multifamily mortgage insurance programs whose commitments will be issued in Fiscal Year 2003, and republishes others at the rate that was in effect in Fiscal Year 2002.

DATES: *Comments Due Date:* September 30, 2002.

ADDRESSES: Interested persons are invited to submit comments and responses to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) responses are not acceptable. A copy of each response will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. eastern time) at the above address.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–1142. Hearing or speech-impaired individuals may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The interim rule on ''Mortgage Insurance Premiums in Multifamily Programs,'' published on July 2, 2001, at 66 **Federal Register** 35070, revised previous regulations that set mortgage insurance premiums (MIP) at a specific figure. The revision permits the Secretary to change an MIP within the full range of HUD's statutory authority of one fourth of one percent to one percent. This Notice announces, effective October 1, 2002, the mortgage insurance premiums to be in effect for FHA firm commitments issued, amended or reissued in Fiscal Year 2003, which are shown in the table below:

Multifamily loan program	FY 2003 basis points
Section 207—Multifamily Housing—New Construction/Substantial Rehabilitation	61
Section 207—Manufactured Home Parks	61
Section 220—Housing In Urban Renewal Areas	61
Section 221(d)(3)—Moderate Income Housing	80
Section 221(d)(4)—Moderate Income Housing	57
Section 223(a)(7)—Refinancing of Insured Multifamily Project	50
Section 223(d)—Operating Loss Loans	80
Section 207/223(f)—Purchase or Refinance Housing	50
Section 231—Housing for the Elderly	61
Section 232—Health Care Facilities	50
Section 232 pursuant to Section 223(f)—Purchase or Refinance Health Care Facilities	50
Section 234(d)—Condominium Housing	50
Section 241(a)—Additions & Improvements for Apartments	80
Section 241(a)—Additions & Improvements for Health Care Facilities	50
Section 242—Hospitals	50
Title XI—Group Practice	50
HOPE VI Projects with or without LIHTC—[221(d)(4)]	57
HOPE VI Projects with or without LIHTC—[207, 220 and 231]	61
Low Income Housing Tax Credit Projects—221(d)(4), 207, 220, and 231 without HOPE VI	50

II. Applicable Mortgage Insurance Premium Regulations

The MIP regulations are contained in 24 CFR 207.252, 207.252(a), and 207.254, published at 66 FR 35072 (July 2, 2001). This Notice is published in accordance with the procedures stated in those regulations.

III. Transition Guidelines

A. General

If a firm commitment has been issued at a higher mortgage insurance premium (MIP) and FHA has not initially endorsed the note, the lender may request the field office to reprocess the commitment at the lower MIP and issue an amended commitment on or after October 1, 2002. If the initial endorsement has occurred, the MIP cannot be changed.

B. Extension of Outstanding 80 basis point Firm Commitments

FHA may extend outstanding firm commitments when the HUB/Program Center determines that the underwriting conclusions (rents, expenses, construction costs, mortgage amount and cash required to close) are still valid.

C. Reprocessing of Outstanding 80 basis point Firm Commitments

FHA will consider requests from mortgagees to reprocess outstanding firm commitments at the lower mortgage insurance premium once the new premiums become effective in Fiscal Year 2003:

1. *Outstanding commitments with initial 60 day expiration dates on or after the effective date of the MIP Notice.* FHA Multifamily HUB/Program Center staff will simply reprocess these cases to reflect the impact of the lower MIP and issue amended commitments;

2. *Outstanding commitments with initial expiration dates prior to the effective date of the MIP Notice which have pending extension requests or have had extensions granted by FHA beyond the initial 60 day period.* These cases will require more extensive reprocessing by FHA staff. Reprocessing will include

an updated FHA field staff analysis and review of rents, expenses, construction costs, particularly considering any changes in Davis-Bacon wage rates and cash required to close. (An updated appraisal may be required from the mortgagee depending on the age of the appraisal.) If reprocessing results in favorable underwriting conclusions, HUB/Program Center staff will issue amended commitments at the new MIP.

D. Reopening of Expired 80 basis point Firm Commitments

FHA will consider requests from mortgagees, which requests may be either updated Traditional Application Processing (TAP) firm commitment applications or updated Multifamily Accelerated Processing (MAP) applications with updated exhibits, to reopen expired 80 basis point commitments on or after the effective date of the MIP Notice, provided that the reopening requests are received within 90 days of the expiration of the commitments and include the $.50 per thousand of requested mortgage reopening fee. Reopening requests will be reprocessed by FHA field staff under the instructions in paragraph C.2 above.

After expiration of the 90 day reopening period, mortgagees are required to submit new applications with the $3 per thousand application fee. (MAP applications must start at the preapplication stage.)

Credit Subsidy

Mortgagee Letters will be issued from time to time to advise mortgagees of any requirements for credit subsidy, and the availability of credit subsidy. In Fiscal Year 2003, it is anticipated that only three programs will require credit subsidy: Section 221(d)(3) for nonprofit sponsors and cooperatives for new construction or substantial rehabilitation, Section 223(d) for operating loss loans for both apartments and health care facilities, and Section 241(a) for supplemental loans for additions or improvements to existing apartments only. FHA will not issue amended commitments for increased mortgage amounts nor obligate additional credit subsidy for projects requiring credit subsidy in Fiscal Year 2003.

Dated: August 26, 2002.

Sean Cassidy,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–22158 Filed 8–29–02; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4710–N–06]

Public Housing Assessment System (PHAS); Extension of Interim Scoring Methodologies for PHAS Physical Condition and Financial Condition Indicators

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice advises public housing agencies (PHAs) and the public that HUD will extend the use of interim scoring methodologies for the Public Housing Assessment System (PHAS) Physical Condition and Financial Condition Indicators. These methodologies were adopted by notice published in the **Federal Register** on March 15, 2002, and described in notices published in the **Federal Register** on November 26, 2001. This extension applies to PHAs with fiscal years ending December 31, 2002; March 31, 2003, and June 30, 2003.

FOR FURTHER INFORMATION CONTACT: For further information contact the Office of Public and Indian Housing Real Estate Assessment Center (PIH–REAC), Attention: Wanda Funk, U.S. Department of Housing and Urban Development, 1280 Maryland Avenue, SW., Suite 800, Washington DC 20024; telephone the Technical Assistance Center at 1–888–245–4860 (this is a toll free number). Persons with hearing-or speech-impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Additional information is available from the PIH–REAC internet site, *http://www.hud.gov/offices/reac.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 15, 2002, HUD published a notice (67 FR 11844) adopting a PHAS interim scoring methodology for PHAs with fiscal years ending September 30, 2001, December 31, 2001, March 31, 2002, June 30, 2002, and September 30, 2002. In that notice HUD announced changes in the scoring methodology for two of the four PHAS assessment indicators: the Physical Condition Indicator and Financial Condition Indicator. Detailed information about the changes to the scoring processes was provided in notices published in the **Federal Register** on November 26, 2001. The Introduction notice was published at 66 FR 59080. The Physical Condition Scoring Process Interim Scoring notice was published at 66 FR 59084. The Financial Condition Scoring Process Interim Assessments notice was published at 66 FR 59126.

For the Physical Condition Indicator, during the interim period, the inspectable areas are reduced from five to two. The weights assigned to the three unscored inspectable areas are redistributed over the two remaining inspectable areas. In addition, for PHAs with a Physical Condition Indicator score of less than 24 on the 30-point scale, properties will be inspected once a year. For PHAs with a Physical Condition Indicator score of 24 or greater on the 30-point scale, properties will be inspected every two years.

For the Financial Condition Indicator, the score for Current Ratio (CR) and number of Months Expendable Fund Balance (MEFB) will not be based on peer groups. All PHAs with a CR or MEFB component value of less than one will receive zero points for these two components if the component values for CR and MEFB are equal to or greater than one, then PHAs, regardless of standing in relation to their peers, will receive the full nine points for each component.

II. Extension of Interim Scoring Methodologies for PHAS Physical Condition and Financial Condition Indicators

At the time that the interim scoring processes were adopted on March 15, 2002, the Department advised that if an extension of the interim period were necessary, the Department would notify PHAs and the public by notice published in the **Federal Register**. The Department has determined that an extension of the interim period is necessary, and by this notice is notifying PHAs and the public that the effective period for the interim scoring processes is extended to PHAs having fiscal years ending on December 31, 2002, March 31, 2003, and June 30, 2003. As advised in the November 26, 2001, notice, the Department is considering improvements and changes to PHAS, and will continue to do so during this extension of the interim period. With respect to any action that may be taken, and consistent with the PHAS rule, HUD will provide advance notice of any changes and provide the opportunity for comment.

Dated: August 26, 2002.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 02–22206 Filed 8–29–02; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4786–N–01]

Notice of Availability of Revised Public Housing Occupancy Guidebook and Request for Comments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice advises the public that HUD is revising the Public Housing Occupancy Guidebook (Occupancy Guidebook) and will make available a copy of the draft, revised Occupancy Guidebook on the HUD Web site and invites interested parties to comment on HUD's revised Occupancy Guidebook.

DATES: Comment Due Date: September 16, 2002.

ADDRESSES: A copy of HUD's revised Occupancy Guidebook can be obtained via the World Wide Web at *http://www.hud.gov/offices/pih/programs/phrhiip/index.cfm* or by calling the Public and Indian Housing Resource Center at 1–800–955–2232. Interested persons may also submit comments regarding this Notice to the Attention of Public Housing Occupancy Guidebook Comments, Department of Housing and Urban Development, Office of Public and Indian Affairs, Room 4224, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. Comments may also be submitted by e-mail to: *occupancy guidebook comments@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Patricia Arnaudo, Director, Customer Services and Amenities Division 451 Seventh Street, SW., Washington, DC 20410–2000; telephone number (202) 708–0744 ext. 4250. A telecommunications device (TDD) for hearing and speech-impaired persons is available at (202) 708–0455. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: HUD is revising the Public Housing Occupancy Guidebook (Occupancy Guidebook) as part of HUD's Rental Housing Integrity Improvement Project (RHIIP). RHIIP is a Secretarial initiative designed to reduce subsidy payment errors and to ensure that the right benefit is going to the right person. The Occupancy Guidebook provides assistance to owners, management agents, residents, contract administrators and HUD staff on the admission and continued occupancy for approximately 1.5 million public housing and 1.8 million tenant based Section 8 rental housing vouchers in housing units.

In order to improve the quality of HUD's revised Occupancy Guidebook, HUD has determined to make copies available for public comment. The document is not in final form and remains under review by the Department. Copies of HUD's draft, revised Occupancy Guidebook will be available for a period of ten (10) business days beginning August 30, 2002, at the HUD Web site *http://www.hud.gov/offices/pih/programs/phrhiip/index.cfm*. Members of the public without access to the World Wide Web may obtain a copy of the revised Occupancy Guidebook by contacting the Public and Indian Housing Resource Center at 1–800–955–2232.

Public input is solicited on the overall scope and direction of the revised Occupancy Guidebook. Interested members of the public may submit comments either electronically or by overnight mail to the addresses listed in the **ADDRESSES** section above. To be most helpful, comments must be identified by specific page and paragraph references and must be received by September 16, 2002.

Dated: August 27, 2002.

Milan Ozdinec,

Deputy Assistant Secretary for Public Housing Investments.

[FR Doc. 02–22207 Filed 8–29–02; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. ER–4407–N–03]

The Performance Review Board

AGENCY: Office of the Deputy Secretary, HUD.

ACTION: Notice of Appointment.

SUMMARY: The Department of Housing and Urban Development announces the appointments of Vickers B. Meadows as Vice Chairperson, and Frank L. Davis and Dexter J. Sidney as members of the Departmental Performance Review Board. The address is: Department of Housing and Urban Development, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Earnestine Pruitt, Director, Executive Personnel Management Division, Department of Housing and Urban Development, Washington, DC 20410, Telephone (202) 708–1381. (This is not a toll-free number)

Dated: August 23, 2002.

Alphonso Jackson,

Deputy Secretary, Department of Housing and Urban Development.

[FR Doc. 02–22208 Filed 8–29–02; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Office of Indian Education Programs

Proposed Agency Information Collection Activities; Submission to OMB

AGENCY: Office of Indian Education Programs, Interior.

ACTION: Notice of request for renewal.

SUMMARY: In compliance with the Paperwork Reduction Act, this notice announces that the Bureau of Indian Affairs is submitting an information collection to the Office of Management and Budget for renewal. The collection concerns the enrollment applications for two Bureau operated post secondary schools: Haskell Indian Nations University and Southwestern Indian Polytechnic Institute. We are requesting a renewal of clearance and requesting comments on this information collection.

DATES: Written comments must be submitted on or before September 30, 2002.

ADDRESSES: You are requested to send any comments to Attention: Desk Officer for the Department of the Interior, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503. Please send a copy of your written comments to Kenneth Whitehorn, Department of the Interior, Office of Indian Education Programs, Branch of Planning, MS Room 3512 MIB, 1849 C Street, NW., Washington, DC 20240. You may fax your written comments to (202) 208–3312.

FOR FURTHER INFORMATION CONTACT: Kenneth Whitehorn, (202) 208–4976.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

I. Abstract

The Bureau of Indian Affairs (BIA) is submitting the admission forms for Haskell Indian Nations University and

the Southwestern Indian Polytechnic Institute for review by OMB. These admission forms are useful in determining program eligibility of American Indian and Alaska Native students for educational services. The forms have been changed to include a Paperwork Reduction Act and Public Burden statements, a Privacy Act statement, and an Effects of Non Disclosure statement.

These forms are utilized pursuant to Blood Quantum Act, Public Law 99–228; the Snyder Act, Chapter 115, Public Law 67–85; and, the Indian Appropriations of the 48th Congress, Chapter 180, page 91, For Support of Schools, July 4, 1884.

II. Request for Comments

A notice announcing the emergency clearance and requesting comments was published on April 23, 2002 (67 FR 19770). There were no comments received regarding that notice, however, the Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agencies' estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection. They also will become a matter of public record.

All written comments will be available for public inspection in Room 3512 of the Main Interior Building, 1849 C Street, NW., Washington, DC, from 7:45 a.m. to 4:15 p.m. EST, Monday through Friday, excluding legal holidays. If you wish to have your name or address withheld from public view, you must state this prominently at the beginning of your comments. We will honor your request to the extent allowed by law.

We will not request nor sponsor a collection of information, and you need not respond to such a request, if there is no valid Office of Management and Budget Control Number.

III. Data

Title: Applications for Admission to Haskell Indian Nations University and to Southwestern Indian Polytechnic Institute.

OMB approval number: 1076–0114.

Type of Review: Renewal.

Description: These eligibility application forms are mandatory in determining a student's eligibility for educational services. This collection is at no cost to the public.

Total Number of Respondents: 2,281.

Total Number of Annual responses: 3,943.

Total Annual Burden hours: 15 minutes per response × 3,943 annual responses = 986 hours.

Dated: August 23, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–22226 Filed 8–29–02; 8:45 am]

BILLING CODE 4310–NM–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Associated Environmental Assessment for the Aransas National Wildlife Refuge Complex in Aransas, Refugio, and Calhoun Counties, Texas

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of Intent to prepare a Comprehensive Conservation Plan and Associated Environmental Assessment for the Aransas National Wildlife Refuge Complex.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Comprehensive Conservation Plan (CCP) and environmental documents pursuant to the National Environmental Policy Act (NEPA) and its implementing regulations, for the Aransas National Wildlife Refuge Complex (ANWRC) headquartered near Austwell, Texas. The ANWRC is located in Aransas, Refugio and Calhoun Counties and includes the Matagorda Island Unit.

The Service is issuing this Notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*):

(1) To advise other agencies, organizations and the public of our intentions, and

(2) To obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: Special mailings, newspaper articles, postings, and media announcements will inform people of opportunities for written input throughout the CCP planning process. Refuge fact sheets will be made available at local libraries in the surrounding communities. This notice of intent/public scoping process will continue until October 29, 2002. Written comments submitted by mail or e-mail should be postmarked by that date to ensure consideration. Comments mailed after that date will be considered to the extent practical. Inquire at the following address for future dates of planning activity and due dates for comments.

ADDRESSES: Address comments and requests for more information to: Charles Holbrook, Refuge Manager, Aransas NWRC, CCP-Project, PO Box 100, Austwell, TX 77950, phone:(361) 286–3559, fax: (361) 286–3722.

Information concerning this Refuge may be also found at the following website: *http://southwest.fws.gov.*

Comments submitted via E-mail should be addressed to Bernice Jackson at *bernice_jackson@fws.gov* or Felipe Prieto at *felipe_prieto@fws.gov*. Additionally, you may hand-deliver comments to Mr. Holbrook, Mrs. Jackson or Mr. Prieto at Aransas National Wildlife Refuge, 7 miles southeast of Austwell, Texas on FM 2040. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law.

FOR FURTHER INFORMATION CONTACT: Carol Torrez, Division of Planning, PO Box 1306, Albuquerque, NM 87103–1306.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Improvement Act of 1997 requires that all lands within the National Wildlife Refuge System (NWRS) be managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives and strategies for achieving refuge purposes. Each Refuge in the NWRS has specific purposes for which it was established. Those purposes are used to develop and prioritize management goals and objectives within the National Wildlife Refuge System mission and to guide which public uses will occur on a given refuge.

The planning process will consider many elements, including habitat and wildlife management, habitat protection and acquisition, wilderness preservation, public recreational opportunities, industrial use and cultural resources. Public input into this planning process is essential. The planning process is a way for the Service and the public to evaluate refuge management goals and objectives for the best possible conservation efforts of this important wildlife habitat. Concurrently, this process is also providing for wildlife-dependent recreation opportunities that are compatible with each Refuge's establishing purposes and the mission of the NWRS.

The Aransas National Wildlife Refuge Complex is located in Aransas, Refugio and Calhoun Counties, Texas and encompasses 115,670 acres of coastal prairie, oak woodland and savannah, barrier island and salt and freshwater marshes. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuge and how the Service will implement management strategies for the conservation and development of these natural resources.

The Service through this notice of intent formally begins the comprehensive conservation planning process for the Aransas National Wildlife Refuge Complex. The Service requests input on any and all issues concerning management or public recreation. Comments regarding the protection of threatened and/or endangered species, migratory birds, native species and their habitats are encouraged. The Service is equally interested in receiving public input in the following areas:

- What makes this Refuge special for you?
- What Refuge projects or activities interest you most?
- What problems or issues do you see affecting management or public use of the Refuge?
- What improvements do you recommend for the Refuge?
- What changes, if any, would you like to see in the management of the Refuge?

The Service has provided the above questions for optional use only. The Planning Team developed these questions to facilitate issues and ideas. Comments received will be used as part of the planning process. Individual comments will not be referenced in our reports or directly responded to.

The Service will continue to solicit information from the public and other agencies via open houses, meetings, and written comments. Special mailings, newspaper releases, and announcements will continue to inform people of the time and place of opportunities for further input to the CCP.

Review of this project will be conducted in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508) found at (*http://www.legal.gsa.gov*), other appropriate Federal laws, and Service policies and procedures for compliance with those regulations.

The Service will prepare an Environmental Assessment (EA) in accordance with procedures for implementing NEPA found in the Department of the Interior Manual (DM Part 516, Chap 6). The decision to prepare an Environmental Impact Statement instead of an EA is contingent upon the complexity of issues following the scoping phase of the CCP process.

We estimate that the draft environmental documents will be available in summer 2003 for public review and comment.

Dated: July 18, 2002.

H. Dale Hall,

Regional Director.

[FR Doc. 02–22134 Filed 8–29–02; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of receipt of application for endangered species permit

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for endangered species permit.

SUMMARY: The following applicant has applied for a permit to conduct certain activities with an endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: Written data or comments on this application must be received at the address given below by September 30, 2002.

ADDRESSES: Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035. Attention: Diane Lynch, Regional Permits Coordinator. Telephone: 413–253–8628; Facsimile: 413–253–8482.

FOR FURTHER INFORMATION CONTACT: Diane Lynch, Telephone: 413–253–8628; Facsimile: 413–253–8482

SUPPLEMENTARY INFORMATION: You are invited to comment on an application received from the Department of Army's, Fort AP Hill, PRT–TE059639–0. The applicant requests authorization to take (collect) entire individuals of three federally listed endangered plants; one individual of Sarracenia oreophila (green pitcher plant); two individuals of Sarracenia rubra spp. alabamensis (Alabama canebrake pitcher plant) and Sarracenia rubra spp. jonesii (Mountain sweet pitcher plant), from Caroline County, Virginia. These plants are not native to Virginia and were planted by an unauthorized individual within Fort AP Hill's boundaries. The plants will be removed from Fort AP Hill and provided to the Lewis Ginter Botanical Gardens, Richmond, Virginia and used as part of an educational display.

Dated: July 29, 2002.

Mamie A. Parker,

Regional Director.

[FR Doc. 02–22151 Filed 8–29–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent to Consult under Section 8 of the Native American Graves Protection and Repatriation Act on an Object of Cultural Patrimony in the Possession of the U.S. Department of the Interior, Fish and Wildlife Service, Washington, DC, and in the Control of the U.S. Department of the Interior, Washington, DC.

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.8, of the intent to consult on affiliation with an object of cultural patrimony in the possession of the U.S. Fish and Wildlife Service, Washington, DC, and in the control of the U.S. Department of the Interior, Washington, D.C.

DATES: Information and comments must be submitted by October 29, 2002.

ADDRESSES: Please submit written comments to the Director, Fish and Wildlife Service, 1849 C Street, NW., Washington, DC 20240, attention: Kevin Kilcullen.

FOR FURTHER INFORMATION, CONTACT: Mr. Kevin Kilcullen, Service Archaeologist, at (703) 358–2029.

SUPPLEMENTARY INFORMATION: The object in question is a headdress that is allegedly associated with the Apache Chief Geronimo and the Commanche Tribe of Oklahoma. The headdress was forfeited to the United States Government in November 2001 as part of a guilty plea agreement resulting from an attempt to sell it in violation of Sections 703 and 707(a) of the Migratory Bird Treaty Act. After consulting with various parties, the United States District Court for the Eastern District of Pennsylvania ruled that the forfeited object would be turned over to the Department of the Interior for care and disposition under the NAGPRA. The headdress is ornamented with golden eagle feathers and is now under the control of the Department and in the possession of the U.S. Fish and Wildlife Service.

An initial assessment of the object indicates that it was likely manufactured during the first decade of the 20th Century. Documentation submitted to the Court during the trial alleges that the headdress was manufactured for use in ''The Last Pow-Wow,'' a gathering of tribal chiefs, which occurred in 1907 in Collinsville, Indian Territory, which is now the State of Oklahoma. The Commanche Chief Quannah Parker purportedly offered the headdress to the Apache Chief Geronimo for use during the event. Other documentation submitted for the Court's consideration alleges that Chief Geronimo took possession of the headdress and subsequently gave it to his Government escort, Jack Moore, as an act of friendship. After Geronimo's death in 1909, Jack Moore allegedly gave the headdress to an acquaintance, whose family retained the object until an attempt was made to sell it illegally in 1999.

The Department of the Interior is attempting to repatriate this object of cultural patrimony to the appropriate tribe or individual using the process found in Subpart C, 43 CFR 10.8 of NAGPRA's regulations.

In order for the Department to fulfill its legal obligations, we are requesting information on the following issues to help in determining the proper affiliation for this object.

1. With regard to affiliation, we are seeking to discover:

a. The appropriate tribal affiliation with this headdress;

b. the nature of that relationship; and

c. how the relationship was determined.

2. Recommendations on how the consultation process should be conducted.

3. The name and address of and appropriate methods to contact Tribal officials to act as representatives during the consultation process.

4. The names of any lineal descendants of individuals who may have an interest or association with this object.

5. The names and appropriate methods to contact traditional religious leaders who should be consulted regarding this object.

6. A description of the kinds of objects of cultural patrimony that your tribe believes to have been made exclusively for ceremonial and other uses.

Interested parties should be aware that this notice is advisory and for the purpose of gathering information to help the Department reach a determination of affiliation. Contact for the purpose of consultation is not recognition of affiliation. We are, however, interested in the views of tribes, individuals, and other interested parties that might be helpful in determining proper affiliation of the object in question.

A letter and a copy of this notice have been sent to officials of the Mescalero Apache Tribe, Apache Tribe of Oklahoma, and Commanche Indian Tribe. A similar public notice requesting comments has been published in major newspapers in the State of Oklahoma.

Dated: July 23, 2002.

Marshall P. Jones, Jr.,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 02–22135 Filed 8–29–02; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey.

ACTION: Notice of Proposed Cooperative Research & Development Agreement (CRADA) Negotiations.

SUMMARY: The U.S. Geological Survey (USGS) is contemplating entering into Cooperative Research and Development Agreement (CRADA) with David Chereb Group, Inc. to develop an analytical software tool available on a CD that takes ''aggregates'' data (''aggregates'' refers to crushed stone, sand and gravel, and slag) and provides a means to analyze it in ways useful to the construction industry and governmental planners—including the production of leading economic indicators.

Inquiries: If any other parties are interested in similar activities, please contact Valentin Tepordei, 12201 Sunrise Valley Drive, MS 983, Reston, VA 20192, phone: (703) 648–7728.

SUPPLEMENTARY INFORMATION: This notice is submitted to meet the USGS policy requirements stipulated in Survey Manual Chapter 500.20.

Dated: August 26, 2002.

P. Patrick Leahy,

Associate Director for Geology.

[FR Doc. 02–22179 Filed 8–29–02; 8:45 am]

BILLING CODE 4310–47–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Application Notice Describing the Areas of Interest and Establishing the Closing Date for Receipt of Applications Under the Education Component of the National Cooperative Geologic Mapping Program (EDMAP) for Fiscal Year 2003

AGENCY: Department of the Interior, U.S. Geological Survey (USGS).

ACTION: Notice.

SUMMARY: Applications are invited for research projects under the EDMAP.

This program is a component of the National Geologic Mapping Program, which is designed to produce information on areas of scientific, social, or economic welfare in the United States. Funding is to support masters and doctoral students during geologic field mapping. Cooperative agreement awards will be on an equal cost-sharing basis; matched with funds from non-Federal sources.

Applications may be submitted by colleges and universities with accredited masters and doctoral programs in Geoscience or related departments only.

ADDRESSES: The program announcement is expected to be available on or about August 26, 2002. You may obtain a copy of Announcement No. 03HQPA0004 from the USGS Acquisition and Grants Information Site at *http://www.usgs.gov/contracts/EDMAP/index.html* or by writing to Kimberly Dove, U.S. Geological Survey, Office of Acquisition and Grants, Mail Stop 205G, 12201 Sunrise Valley Drive, Reston, Virginia 20192, or by fax (703) 648–7901.

DATES: The closing date for receipt of applications will be on or about November 13, 2002. The actual closing date will be specified in Announcement No. 03HQPA0004.

FOR FURTHER INFORMATION CONTACT: Randy Orndorf, Educational Component of the National Cooperative Geologic Mapping Program, Geological Survey, Mail Stop 908, 12201 Sunrise Valley Drive, Reston, Virginia 20192. Telephone (703) 648–4316.

SUPPLEMENTARY INFORMATION: Authority for this program is contained in the National Geologic Mapping Reauthorization Act of 1999, Public Law 106–148. The Office of Management and Budget Catalog of Federal Domestic Assistance Number is 15.810.

Dated: August 20, 2002.

Carol F. Aten,

Chief, Office of Administrative Policy and Services.

[FR Doc. 02–22180 Filed 8–29–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Advisory Board for Exceptional Children

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Bureau of Indian Affairs announces that the Advisory Board for Exceptional Children will hold its next meeting in Choctaw, Mississippi. The purpose of the meeting is to discuss the impact of the Individuals with Disabilities Education Act Amendments of 1997 on Indian children with disabilities.

DATES: The Board will meet Thursday, September 26, 2002 from 8 a.m. to 4:30 p.m., Friday, September 27, 2002 from 8 a.m. to 4:30 p.m. and Saturday, September 28, 2002 from 8 a.m. to 12 p.m. (EST).

ADDRESSES: The meetings will be held at the Golden Moon Hotel and Casino at Pearl River Resort, Highway 16 West, Choctaw, Mississippi 39350, Telephone (601) 650–1234; Fax (601) 650–1350.

Written statements may be submitted to Mr. William A. Mehojah, Director, Office of Indian Education Programs, Bureau of Indian Affairs, 1849 C Street, NW., MS–3512, Washington, DC 20240; Telephone (202) 208–6123; Fax (202) 208–3312.

FOR FURTHER INFORMATION CONTACT: Dr. Sherry Allison, Education Specialist—Special Education, Bureau of Indian Affairs, Office of Indian Education Programs, Center for School Improvement, P.O. Box 1088, Albuquerque, New Mexico 87103; Telephone (505) 248–7529.

SUPPLEMENTARY INFORMATION: The Advisory Board was established to advise the Secretary of the Interior, through the Assistant Secretary—Indian Affairs, on the needs of Indian children with disabilities, as mandated by the Individuals with Disabilities Education Act Amendments of 1997 (Pub. L. 105–17, June 4, 1997).

The agenda for this meeting will cover public comments, approval of minutes, new business: annual report, comprehensive system of personnel development, new organizational information, procedures for complaint investigations, Elementary and Secondary Education Act Re-authorization and Individuals with Disabilities Education Act Re-authorization. Meetings are open to the public.

The next Board meeting will be held on or about January 7–9, 2003. Location, date and time may be obtained from the Center for School Improvement, telephone (505) 248–7529 or 7544; Fax (505) 248–7545.

Dated: August 23, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–22227 Filed 8–29–02; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–SJFO–01–001EIS]

Notice of Availability of Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement for oil and gas development on the Southern Ute Indian Reservation, in La Plata and Archuleta Counties, Colorado.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and implementing regulations and other applicable statutes, the Bureau of Land Management (BLM) announces the availability of a Final Environmental Impact Statement (FEIS) for Oil and Gas Development on the Southern Ute Indian Reservation, in La Plata and Archuleta Counties, Colorado. The BLM, in cooperation with the Bureau of Indian Affairs and the Southern Ute Tribe, has prepared the FEIS to provide Tribal leaders and agency decision makers with comprehensive environmental impact information on which to base oil and gas leasing and development decisions.

The BLM also involved the local community in the collaborative process through the scoping effort; outreach efforts in conjunction with the Tribal Energy and Natural Resources Departments; meetings with the San Juan Citizen's Alliance, the U.S. Fish and Wildlife Service, the Colorado Oil and Gas Conservation Commission and the Colorado Division of Wildlife.

DATES: Written comments on the FEIS will be accepted for 30 days following the date that the Environmental Protection Agency (EPA) publishes their notice of availability of the FEIS in the **Federal Register**. The BLM will notify all parties on this project's mailing list of the dates when comments will be accepted.

ADDRESSES: Please address questions, comments or requests for copies of the FEIS to the San Juan Public Lands Center, Attn: Walt Brown, 15 Burnett Court, Durango, CO 81301.

FOR FURTHER INFORMATION CONTACT: Walt Brown at the above address, or phone: 970–247–4874.

SUPPLEMENTARY INFORMATION: This Programmatic DEIS analyzes the potential impacts of future oil and gas development on approximately 200,000 acres of Tribal land within a 421,000-acre Study Area. Individual authorizations with appropriate NEPA

analysis would be granted to operators on a site-specific project basis. The Study Area lies entirely within the exterior boundaries of the Southern Ute Indian Reservation and includes Indian mineral estate, a patchwork of Tribal and fee lands, and a small amount of State of Colorado parkland. The Indian mineral estate is held in trust by the United States of America for the benefit of the Southern Ute Indian Tribe, and the federal government retains this trust responsibility due to historical factors. The DEIS is a cooperative effort by the Southern Ute Indian Tribe, the BLM and the BIA.

Most of the Study Area is already substantially developed for both conventional gas production and coalbed methane (CBM) production. The Study Area also supports substantial agricultural and residential surface use, with lesser amounts of commercial and recreational land use.

The EPA and the BLM each published a Notice of Availability in the **Federal Register** on January 5, 2001. The Draft Environmental Impact Statement (DEIS) was mailed to the public in January, 2001. A public meeting for the DEIS was held, pursuant to 40 Code of Federal Regulations (CFR) 1506.6, at 6 p.m. MDT, on Tuesday, February 27, 2001 at the Rolling Thunder Hall in Ignacio, Colorado. The purpose of the meeting was to solicit public comments on the DEIS. The 60-day comment period on the DEIS ended on March 20, 2001.

The FEIS analyzes three alternatives. Alternative 1 is the no-action alternative and represents the continuation of present management and of exploration and development at rates that are similar to recent drilling and development activity rates. A total of 210 wells would be developed, including both conventional and CBM wells.

Alternative 2 considers the drilling or recompletion of an optional second well, or infill well, on a majority of CBM spacing units located on Tribal trust lands within the Study Area. This would result in an effective CBM well density of four wells per section. The increased number of wells would allow accelerated production of the resource, increase recoveries of the gas in place, and increase economic returns to the Tribe. The status quo development described in Alternative 1 is included within Alternative 2, resulting in a total of 636 new wells that would be drilled under Alternative 2, including both conventional and CBM production wells.

Alternative 3 is the Agency and Tribal preferred alternative. This alternative includes all the developments included within Alternative 2 plus the addition of Enhanced Coalbed Methane (ECBM) recovery techniques; *i.e.*, the injection of nitrogen, carbon dioxide, or other fluids into the Fruitland Formation. For the purpose of Alternative 3, ECBM was projected to occur on almost half the Tribal CBM spacing units within the exterior boundaries of the Reservation, resulting in 70 injection wells drilled or recompleted (one injection well per every two producing wells in the injection project areas) on Tribal trust lands. Some of the injection wells may be directionally drilled off existing pads to minimize impacts and costs. Additional production wells would not be required. A total of 706 wells would be developed under Alternative 3, including conventional wells, CBM production wells, and injection wells.

Eighteen letters were received during the comment period on the Draft EIS from February 6, 2001 to March 20, 2001, and five oral comments were recorded at the public meeting on February 27, 2001. The issues that were identified in the comment letters and at the meeting included the scope of the air quality, water quality, cultural resource, socioeconomic, transportation and cumulative impact analyses; the range and detail of the alternatives; the need for additional air and water quality monitoring; the lack of analysis for 80 acre gas well spacing; and the need for additional analysis of impacts from cavitation and flaring.

All comments received on the DEIS have been addressed appropriately in the FEIS, including revisions to the document as warranted. The FEIS is not a decision document. A Record of Decision will be prepared and made available to the public following the 30-day comment period on the FEIS.

Comments on the FEIS, including names and street addresses of respondents, will be available for public review at the San Juan Public Lands Center, 15 Burnett Court, Durango, Colorado, during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays.

Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives of officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: June 10, 2002.

Mark Stiles,

Acting Center Manager, San Juan Public Lands Center, Colorado, Bureau of Land Management, USDI.

[FR Doc. 02–21684 Filed 8–29–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5853–EU]

Notice of Realty Action: Competitive Sale of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: The following lands have been designated for disposal under Public Law 105–263, and the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2343). They will be sold competitively in accordance with Section 203 and Section 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 1719) at not less than the appraised fair market value (FMV).

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 18, SW¼NW¼NE¼,
NE¼NW¼NE¼, W½SW¼SW¼NE¼;
Sec. 19, W½NE¼NW¼SE¼;
Sec. 32, SE¼NE¼NE¼SW¼,
NE¼SE¼NE¼SW¼,
SE¼SE¼NE¼SW¼,
SW¼NW¼NW¼SE¼,
NW¼SW¼NW¼SE¼.

T. 21 S., R. 60 E.,
Sec. 17, W½NE¼NE¼NE¼;
Sec. 31, E½SW¼SW¼NE¼.

T. 22 S., R. 60 E.,
Sec. 9, W½NE¼NE¼SE¼;
Sec. 12, E½SW¼SE¼NE¼,
SW¼SE¼SE¼NE¼;
Sec. 13, SW¼SE¼SW¼NW¼;
Sec. 15, W½NW¼NW¼NW¼;
Sec. 18, SE¼SW¼SE¼;
Sec. 21, NW¼SE¼SW¼NW¼,
NE¼SE¼SW¼NW¼,
NW¼SW¼SE¼NW¼,
NE¼SW¼SE¼NW¼;
Sec. 23, NW¼SW¼SE¼NE¼;
Sec. 24, SE¼NW¼NE¼NE¼,
NE¼NE¼SW¼NE¼,
SE¼NE¼SW¼NE¼,
NE¼NW¼SW¼NE¼,
NW¼NW¼SW¼NE¼,
SW¼NW¼SW¼NE¼,
NE¼NW¼SE¼NE¼,
S½NW¼NE¼NW¼,
W½SW¼NE¼NW¼,
SE¼SW¼NE¼NW¼,
SW¼SE¼NW¼NW¼,
E½SE¼NW¼NW¼,
NE¼NE¼NE¼SW¼.

T. 22 S., R. 61 E.,
Sec. 14, E½SW¼SW¼SE¼NE¼,
W½SE¼SW¼SE¼NE¼,

SW¼NW¼NE¼SE¼,
W½NE¼SE¼SW¼SE¼,
W½NW¼SW¼SE¼SE¼,
W½NW¼NW¼SE¼SE¼,
E½NW¼NW¼SE¼SE¼,
W½NE¼NW¼SE¼SE¼,
E½NE¼NW¼SE¼SE¼,
SE¼NW¼SE¼SE¼,
E½SW¼NW¼SE¼SE¼,
NE¼SW¼SE¼SE¼,
W½SE¼SW¼SE¼SE¼.

T. 22 S., R. 60 E., M.D.M.,

Sec. 21, SE¼SW¼SW¼NE¼,
S½SE¼SW¼NE¼,
SW¼SW¼SE¼NE¼,
S½SE¼SE¼NE¼,
SW¼SE¼SW¼NW¼, SW¼SE¼
SE¼NW¼, NE¼NW¼NE¼SW¼,
SW¼NW¼NE¼SW¼,
S½SW¼NE¼SW¼,
W½NE¼NW¼SW¼,
N½NW¼NW¼SW¼,
SW¼NW¼NW¼SW¼,
N½SW¼NW¼SW¼,
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NW¼SE¼NW¼SW¼,
NE¼NE¼SW¼SW¼,
NW¼NW¼SW¼SW¼,
SE¼NE¼SE¼SW¼,
NW¼NW¼SE¼SW¼,
E½NW¼SE¼SW¼,
SE¼SW¼SE¼SW¼, SE¼SE¼SW¼,
NE¼NE¼NE¼SE¼,
SE¼NW¼NE¼SE¼,
E½SW¼NE¼SE¼,
NE¼SE¼NE¼SE¼,
SE¼NE¼NW¼SE¼,
E½NW¼NW¼SE¼,
SW¼NW¼NW¼SE¼,
S½SW¼NW¼SE¼, SE¼NW¼SE¼,
W½NE¼SW¼SE¼,
S½NW¼SW¼SE¼,
NE¼SW¼SW¼SE¼,
SW¼SW¼SW¼SE¼,
W½SE¼SW¼SE¼,
SE¼SE¼SW¼SE¼,
NE¼NE¼SE¼SE¼, S½NE¼SE¼SE¼,
S½NW¼SE¼SE¼, N½SW¼SE¼SE¼,
N½SE¼SE¼SE¼;

Sec. 22, S½S½SW¼NE¼,
NW¼SW¼SE¼NE¼,
SE¼SW¼SE¼NE¼,
W½SE¼SE¼NE¼, S½S½SE¼NW¼,
NE¼NE¼NE¼SW¼,
N½NW¼NE¼SW¼,
N½NE¼NE¼SE¼,
NE¼NW¼NE¼SE¼,
E½SE¼NE¼SE¼,
NW¼NE¼NW¼SE¼,
N½NW¼NW¼SE¼,
E½NE¼SE¼SE¼;

Sec. 27, SE¼NE¼NE¼NE¼,
S½NE¼SW¼NE¼,
S½NW¼SW¼NE¼SW¼SW¼NE¼,
S½SE¼SW¼NE¼, SW¼SE¼NE¼,
NE¼SE¼SE¼NE¼,
SW¼SE¼SE¼NE¼,
NW¼SW¼NW¼NW¼,
SW¼NE¼SW¼NW¼,
SE¼NW¼SW¼NW¼,
E½SW¼SW¼NW¼,
SW¼SW¼SW¼NW¼,
E½SE¼SW¼NW¼,
NW¼SE¼SW¼NW¼,
SE¼NE¼SE¼NW¼,
S½NW¼SE¼NW¼,
SW¼SW¼SE¼NW¼, SE¼SE¼NW¼,
E½NE¼NE¼SW¼,
W½SE¼SW¼SW¼,
W½W¼SE¼SW¼,
W½NW¼NE¼SE¼,
E½SW¼NE¼SE¼, W½SE¼NE¼SE¼,
E½NE¼NW¼SE¼,
W½SW¼NW¼SE¼, SE¼NW¼SE¼,
E½W½SW¼SE¼, E½E½SW¼SE¼,
E½NE¼SE¼SE¼, W½NW¼SE¼SE¼,
S½SE¼SE¼;

Sec. 28, N½NE¼NE¼NE¼,
SW¼NE¼NE¼NE¼,
SE¼SW¼NE¼NE¼,
N½SE¼NE¼NE¼,
SE¼SE¼NE¼NE¼,
NW¼NE¼NW¼NE¼,
NE¼NW¼NW¼NE¼,
W½W½NW¼NE¼,
NW¼SE¼NW¼NE¼,
SE¼SE¼NW¼NE¼,
NE¼NE¼SW¼NE¼,
NE¼NE¼SE¼NE¼,
SW¼NE¼SE¼NE¼,
NE¼NW¼SE¼NE¼,
W½SE¼SE¼NE¼,
NW¼NE¼NW¼NW¼,
E½SW¼NE¼NW¼,
NW¼SW¼NE¼NW¼, SE¼NE¼NW¼,
NW¼NE¼NW¼NW¼,
S½NE¼NW¼NW¼,
NE¼NW¼NW¼NW¼,
W½NW¼NW¼NW¼,
NE¼SW¼NW¼NW¼,
SW¼SW¼NW¼NW¼,
S½SE¼NW¼NW¼,
NW¼NW¼SW¼NW¼,
SE¼NW¼SW¼NW¼,
S½SW¼SW¼NW¼,
NE¼SE¼SW¼NW¼,
S¼SE¼SW¼NW¼,
SE¼NE¼SE¼NW¼, NW¼SW¼SE¼
NW¼, N½SE¼SE¼NW¼;

Sec. 29, NE¼NE¼NE¼NE¼,
SW¼NE¼NE¼NE¼,
NE¼NW¼NE¼NE¼,
S½NW¼NE¼NE¼,
N¼SW¼NE¼NE¼,
NW¼SE¼NE¼NE¼,
SE¼SE¼NE¼NE¼,
SE¼NE¼NW¼NE¼,
NE¼NW¼NW¼NE¼,
SE¼SE¼NW¼NE¼,
S½NW¼SW¼NE¼,
NE¼SW¼SW¼NE¼,
S½SW¼SW¼NE¼,
S½SE¼SW¼NE¼,
NW¼NE¼SE¼NE¼,
SE¼NE¼SE¼NE¼,
SW¼SW¼SE¼NE¼, SE¼SE¼NE¼,
SE¼NE¼SW¼NW¼,
NE¼NW¼SW¼NW¼,
S½NW¼SW¼NW¼, SW¼SW¼NW¼,
NE¼SE¼SW¼NW¼,
S½SE¼SW¼NW¼,
E½NE¼SE¼NW¼, NW¼SE¼NW¼,
NE¼SW¼SE¼NW¼,
SW¼SW¼SE¼NW¼,
S½SE¼SE¼NW¼, E½NE¼NE¼SW¼,
W¼NW¼NE¼SW¼, SW¼NE¼SW¼,
W½SE¼NE¼SW¼,
E½NE¼NW¼SW¼, NW¼NW¼SW¼,
W½SW¼NW¼SW¼,
W½SE¼NW¼SW¼, N½SW¼SW¼,
SE¼SW¼SW¼, N½SE¼SW¼,
E½SW¼SE¼SW¼, E½SE¼SE¼SW¼,
E½E¼NE¼SE¼, W½NE¼NW¼SE¼,
E½SE¼NW¼SE¼, NE¼SE¼SE¼,
W½NW¼SE¼SE¼, S½SE¼SE¼;

Sec. 34, NW¼NE¼NE¼,
W½SE¼NW¼NE¼, E½SE¼SE¼NE¼,
E½NE¼NE¼NW¼,
E½NE¼NW¼NW¼,
E½SW¼NW¼NW¼,
E½NE¼SW¼NW¼, NE¼SE¼NW¼,
W½NW¼SE¼NW¼,
E½SE¼SE¼NW¼, NW¼NE¼SW¼,
W½SE¼NE¼SW¼,
E½SE¼NW¼SW¼,
W½NW¼SW¼SW¼,
E½SW¼SW¼SW¼,
W½SE¼SE¼SW¼, E½E¼SE¼SW¼,
SE¼SE¼SW¼, N½NE¼SE¼,
E½SW¼NW¼SE¼, NE¼SW¼SE¼,
W½SW¼SE¼, E½SE¼SW¼SE¼,
W½SW¼SE¼SE¼.

Totaling 1147.50 gross acres.

In addition to the lands described herein, parcels that have been published in a previous Notice of Realty Action (NORA), and were previously offered but did not sell, may be re-offered at this sale.

When the land is sold, conveyance of the locatable mineral interests will occur simultaneously with the sale of the land. The locatable mineral interests being offered have no known mineral value. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. In conjunction with the final payment, the applicant will be required to pay a $50.00 non-refundable filing fee for processing the conveyance of the locatable mineral interests.

The terms and conditions applicable to the sale are as follows:

All Parcels Subject to the Following

1. All leaseable and saleable mineral deposits are reserved on land sold; permittees, licensees, and lessees retain the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. All land parcels are subject to all valid existing rights. Parcels may also be subject to applications received prior to publication of this Notice if processing the application would have no adverse affect on the appraised FMV. Encumbrances of record are available for review during business hours, 7:30 a.m. to 4:15 p.m., PDT, Monday through Friday, at the Bureau of Land Management, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, NV.

4. All land parcels are subject to reservations for roads, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' Transportation Plans.

5. All purchasers/patentees, by accepting a patent, agree to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgements of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of federal, state, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgements, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Other releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by federal or state environmental laws; off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by federal and state law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

Maps delineating the individual sale parcels will be available for public review at the BLM Las Vegas Field Office. Appraisals for each parcel will be available for public review at the Las Vegas Field Office on or about September 16, 2002.

Each parcel will be offered by sealed bid, and at oral auction. All sealed bids must be received at the BLM Las Vegas Field Office (LVFO), 4701 N. Torrey Pines Drive, Las Vegas, NV 89130, no later than 4:15 p.m., PDT, November 13, 2002. Sealed bid envelopes must be marked on the lower front left corner with the parcel number and sale date. Bids must be for not less than the appraised FMV and a separate bid must be submitted for each parcel.

Each sealed bid shall be accompanied by a certified check, money order, bank draft, or cashier's check made payable to the Bureau of Land Management, for not less than 10 percent of the amount bid.

The highest qualified sealed bid for each parcel will become the starting bid for oral bidding. If no sealed bids are received, oral bidding will begin at the appraised FMV.

All parcels will be offered for competitive sale by oral auction beginning at 10 a.m., PDT, November 15, 2002, at the Clark County Commission Chambers, Clark County Government Center, 500 S. Grand Central Parkway, Las Vegas, Nevada. Registration for oral bidding will begin at 8:30 a.m. the day of sale and will continue throughout the auction. All oral bidders are required to register.

The highest qualifying bid for any parcel, whether sealed or oral, will be declared the high bid. The apparent high bidder, if an oral bidder, must submit the required bid deposit immediately following the close of the sale in the form of cash, personal check, bank draft, cashiers check, money order or any combination thereof, made payable to the Bureau of Land Management, for not less than 20 percent of the amount bid.

The remainder of the full bid price, whether sealed or oral, must be paid within 180 calendar days of the sale date. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM. Unsold parcels may be offered on the Internet. Internet auction procedures will be available at *www.auctionrp.com*. If unsold on the Internet, parcels may be offered at future auctions without additional legal notice. Upon publication of this notice and until the completion of the sale, the BLM is no longer accepting land use applications affecting any parcel being offered for sale, including parcels being offered for sale that have been published in a previous Notice of Realty Action. However, land use applications may be considered after the completion of the sale within parcels that are not sold through sealed, oral, or on-line Internet auction procedures.

Federal law requires bidders to be U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property; or an entity including, but not limited to, associations or partnerships capable of holding property or interests therein under the law of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership, must accompany the bid deposit.

In order to determine the fair market value of the subject public lands through appraisal, certain assumptions have been made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government. Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses of the lands offered for sale, and conveyance of the subject lands will not be on a contingency basis. It is the buyers' responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands. It is also the buyers' responsibility to be aware of existing or projected use of nearby properties. When conveyed out of federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, planning and environmental documents is available for review at the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130, or by calling (702) 515–5114. Much of this information will also be available on the Internet at *http://propertydisposal.gsa.gov*. Click on NV for Nevada.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, the general public and interested parties may submit comments to the Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of any adverse comments, this realty action will become the final determination of the

Department of Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws or is determined to not be in the public interest. Any comments received during this process, as well as the commentor's name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish your name and/or address be made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A commentor's request to have their name and/or address withheld from public release will be honored to the extent permissible by law.

Lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: August 12, 2002.

Angie Lara,

Assistant Field Manager.

[FR Doc. 02–22290 Filed 8–27–02; 4:06 pm]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5853–EU]

Notice of Realty Action: Direct Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Direct sale of public lands in Clark County, Nevada.

SUMMARY: The following lands have been examined and found suitable for direct sale utilizing non-competitive procedures, at not less than the appraised fair market value. The lands have been designated for disposal and are being sold under the authority of Public Law 105–263, the Southern Nevada Public Land Management Act of 1998 (SNPLMA) (112 Stat. 2343) and Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750, 43 U.S.C. 1713 and 1719).

Mount Diablo Meridian, Nevada

T. 19 S., R. 61 E.,
Sec. 17, Lot 17;
Sec. 20, Lots 18 and 20.

The lands consist of 35.63 acres, more or less, located in Clark County, Nevada. These parcels of land, situated in North Las Vegas are being offered as a direct sale to North Valley Enterprises, LLC. This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

Conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-returnable filing fee for each parcel for conveyance of the available mineral interests. The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way is reserved for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All leaseable and saleable mineral deposits are reserved on land sold; permittees, licensees, and lessees retain the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

3. Both parcels are subject to all valid existing rights.

4. Both parcels are subject to reservations for roads, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' Transportation Plans.

5. All purchasers/patentees, by accepting a patent, agree to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of federal, state, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Other releases or threatened releases of solid or hazardous or hazardous waste(s) and/or hazardous substance(s), as defined by federal or state environmental laws; off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by federal and state law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

Maps delineating the individual parcels will be available for public review at the Bureau of Land Management (BLM) Las Vegas Field Office. Appraisals for each parcel will be available for review when received at the same office. Upon publication of this notice and until completion of this sale, the BLM is no longer accepting land use applications affecting either of these parcels.

In order to determine the fair market value of the subject public lands through appraisal, certain assumptions have been made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the BLM gives notice that these assumptions may not be endorsed or approved by units of local government. Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses of the lands offered for sale, and conveyance of the subject lands will not be on a contingency basis. It is the buyer's responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands. It is also the buyer's responsibility to be aware of existing or projected use of nearby properties. When conveyed out of federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Detailed information concerning this sale , including the reservations, sale procedures and conditions, planning and environmental documents is available for review at the Bureau of Land Management, Las Vegas Field

Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130 or by calling (702) 515–5000.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, the general public and interested parties may submit comments to the Field Manager, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The BLM may withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws or is determined to not be in the public interest. Any comments received during this process, as well as the commentor's name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish your name and/or address be made available to the public. Any determination by the BLM to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A commentor's request to have their name and/or address withheld from public release will be honored to the extent permissible by law.

The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: August 12, 2002.

Angie Lara,

Assistant Field Manager.

[FR Doc. 02–22291 Filed 8–27–02; 4:06 pm]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Committee for the Preservation of the White House; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Committee for the Preservation of the White House will be held at the White House at 1 p.m., Wednesday, September 18, 2002.

DATES: September 18, 2002.

FOR FURTHER INFORMATION CONTACT: Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW., Washington, DC 20242. (202) 619–6344.

SUPPLEMENTARY INFORMATION: It is expected that the meeting agenda will include policies, goals, and long range plans. The meeting will be open, but subject to appointment and security clearance requirements. Clearance information, which includes full name, date of birth and social security number, must be received by September 11, 2002. Due to the present mail delays being experienced, clearance information should be faxed to (202) 619–6353 in order to assure receipt by deadline. Inquiries may be made by calling the Committee for the Preservation of the White House between 9 a.m. and 4 p.m. weekdays at (202) 619–6344. Written comments may be sent to the Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW., Washington, DC 20242.

Dated: August 20, 2002.

Ann Bowman Smith,

Executive Secretary, Committee for the Preservation of the White House.

[FR Doc. 02–22279 Filed 8–29–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

South Delta Improvements Program

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement/ environmental impact report (EIS/EIR) and notice of public scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation and the California Department of Water Resources (DWR) intend to prepare an EIS/EIR for implementing the South Delta Improvements Program (SDIP). The purpose of the SDIP is to increase conveyance capacity at the State Water Project's Delta export facility to meet water supply demands south of the Delta in a manner which does not further significantly adversely impact Bay-Delta fish species or other currently permitted beneficial uses of water in the south Delta.

DATES: A series of public scoping meetings will be held to solicit public input on alternatives, concerns, and issues to be addressed in the EIS/EIR. The dates are:

- October 7, 2002, 1:30 to 4 p.m., Sacramento, California.
- October 9, 2002, 6 to 8 p.m., Brentwood, California.
- October 10, 2002, 6 to 8 p.m., Los Angeles, California.
- October 15, 2002, 6 to 8 p.m., Fresno, California.

Written comments on the scope of the EIS/EIR may be mailed to Reclamation at the address below by October 4, 2002. Comments received after this date will be considered but may not be included in the resulting EIS/EIR scope.

ADDRESSES: The meeting locations are:

- Sacramento at Resources Building Auditorium, 1416 Ninth Street.
- Brentwood at Brentwood Community Center Multipurpose Room, 730 Third Street.
- Los Angeles at Metropolitan Water District of Southern California, 700 North Alameda Street.
- Fresno at Fresno Convention and Conference Center, 700 M Street, Wine Room.

Written comments on the scope of the EIS/EIR should be sent to Mr. Dan Meier, Bureau of Reclamation, 2800 Cottage Way, MP–700, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Mr. Meier, Reclamation, at the above address, or by telephone at 916–978–5086 or TDD 1–800–735–2922; or Mr. Paul Marshall, Department of Water Resources, 1416 Ninth Street, Sacramento, CA 94236, or by telephone at 916–653–2118.

SUPPLEMENTARY INFORMATION:

Background

Demands for water supplies from the Delta for municipal, agricultural, and environmental purposes have increased in recent years, creating conflicts between water users and efforts to sustain the Delta's aquatic ecosystem and recover listed fish. The joint Federal-State CALFED Bay-Delta Program (CALFED) was formed to develop and implement a long-term comprehensive plan to restore ecological health and improve water management for beneficial uses of the Bay-Delta system. The CALFED Programmatic EIS/EIR and Programmatic Record of Decision (ROD) were issued in July and August 2000, respectively.

The water export facilities for both of California's largest water projects, the State Water Project (SWP) (operated by DWR) and the Central Valley Project (CVP) (operated by Reclamation), are located in the south Delta. These export

facilities provide water for urban, industrial, and agricultural uses from the San Francisco Bay area to southern California. In the south Delta, much of the land is used for agriculture purposes. There are approximately 170 diversions within the area of the South Delta Water Agency (SDWA) that provide water for irrigation. Through its Programmatic EIS/EIR, CALFED determined that its overall program objectives could not be met without some south Delta conveyance improvements. The SDIP contains key conveyance improvements identified for implementation in Stage 1 of CALFED.

There are three primary issues with respect to water in the south Delta: Water level, water quality, and fishery concerns. For water level, current diversion rates and the proposed diversion rates could lower the water stage, making the water in the channels too low for agricultural purposes during some low-tide conditions. To mitigate the effects of the lowered stage levels, DWR has been installing temporary rock hydraulic barriers each year; however, temporary barriers are expensive and inflexible in use, and limit water quality actions in the south Delta. The second issue is related to water quality. In addition to an adequate water supply, salinity standards set forth by the State Water Resources Control Board must also be met. Water quality for agriculture has been addressed through a partial exchange of water during high tides. However, this method is limited to the exchange that the tides can offer. The third issue is fishery concerns related to salmon and Delta smelt. San Joaquin River salmon populations have greatly declined since the construction of the CVP and SWP. Some of the decline is attributable to the operation of the CVP and SWP Delta export facilities, where San Joaquin River salmon smolts are lost through predation and entrainment. DWR has been installing a temporary rock barrier at the Head of Old River (where Old River bifurcates from the San Joaquin River) to reduce the number of fish entering the south Delta channels and being lost due to predation or entrainment.

The major components of the SDIP are:

- Increasing the maximum allowable diversion capacity at the SWP's Clifton Court Forebay to 8,500 cubic feet per second;
- Dredging a portion of Old River to improve conveyance capability during periods of high SWP and CVP Delta exports;
- Construction of permanent operable barriers to improve water supply reliability and water quality in the south Delta;
- Dredging local channels to reduce the frequency of barriers operations and to accommodate improvements to existing agricultural diversions both upstream and downstream of the proposed barriers;
- Constructing a permanent operable fish control structure at the head of Old River to reduce fish losses.

The SDIP is intended to address the needs of the export projects, the Delta ecosystem and local in-Delta agricultural water users. An integral element of the SDIP is to minimize water supply conflicts by incrementally increasing to the maximum pumping capability at Banks Pumping Plant when impacts to aquatic resources are low, thereby allowing reduced exports during environmentally sensitive times. The SDIP would provide more reliable long-term export capability by the SWP and CVP, protect local diversions in the Delta and minimize fishery impacts, and supplement and/or replace ongoing annual installation of temporary barriers and local dredging and diversion improvements in the Delta.

Alternatives

Initial types of alternatives identified for consideration involve alternative barrier design, number of barriers and locations of barriers, and operating criteria at Banks Pumping Plant. These alternatives will be analyzed in the EIS/EIR if they are determined to be reasonable and feasible alternatives that meet the basic purpose and need and objectives of the Proposed Action/Project. Additional alternatives may be identified through the public involvement and scoping process.

Additional Information

Comments provided on this NOI and as part of public scoping meetings, including names and home addresses of respondents, may be made available for public review. Individual respondents may request that their home address be withheld from public disclosure, which will be honored to the extent allowable by law. There may also be circumstances in which the respondent's identity may be withheld from public disclosure, as allowable by law. If you wish to withhold your name and/or address, you must state this prominently at the beginning of your comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

If special services are required at the meeting, please contact Sammie Cervantes at (916) 978–5104, as far in advance of the meeting as possible. If a request cannot be honored, the requestor will be notified.

Dated: August 19, 2002.

Frank Michny,

Regional Environmental Officer.

[FR Doc. 02–22172 Filed 8–29–02; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–444]

Oil and Gas Field Services: Impediments to Trade and Prospects for Liberalization

AGENCY: International Trade Commission.

ACTION: Rescheduling of public hearing.

EFFECTIVE DATE: August 23, 2002.

SUMMARY: The public hearing on this matter, scheduled for October 1, 2002, has been rescheduled to October 3, 2002. The public hearing will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on October 3, 2002. All persons will have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., September 17, 2002. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., September 19, 2002; the deadline for filing post-hearing briefs or statements is 5:15 p.m., October 22, 2002. Notice of institution of the investigation and an earlier scheduled hearing date were published in the **Federal Register** of July 15, 2002 (67 FR 46541). In the event that, at of the close of business on September 17, 2002, no witnesses are scheduled to appear at the hearing, the hearing will be cancelled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–2000) after September 17, 2002 for information concerning whether the hearing will be held.

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from Joann Tortorice, Project Leader (202–205–3032; *jtortorice@usitc.gov*), Amanda Horan,

Deputy Project Leader (202–205–3459; *ahoran@usitc.gov*), or Richard Brown, Chief, Services and Investment Division (202–205–3438; *rbrown@usitc.gov*), Office of Industries, U.S. International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091; *wgearhart@usitc.gov*). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

List of Subjects: WTO, GATS, oil and gas field services.

Issued: August 26, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–22114 Filed 8–29–02; 8:58 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1013 (Preliminary)]

Saccharin from China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of saccharin, provided for in subheading 2925.11.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Pursuant to §207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the Department of Commerce of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On July 11, 2002, a petition was filed with the Commission and Commerce by PMC Specialties Group, Inc., Cincinnati, OH, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of saccharin from China. Accordingly, effective July 11, 2002, the Commission instituted antidumping duty investigation No. 731–TA–1013 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 18, 2002 (67 FR 47398). The conference was held in Washington, DC, on August 1, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 26, 2002. The views of the Commission are contained in USITC Publication 3535 (September 2002), entitled Saccharin From China: Investigation No. 1013 (Preliminary).

By order of the Commission.

Issued: August 26, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–22185 Filed 8–29–02; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Commissioner Lynn M. Bragg not participating.

INTERNATIONAL TRADE COMMISSION

Possible Modifications to the International Harmonized System Nomenclature

AGENCY: International Trade Commission.

ACTION: Request for public comments on proposal to delete certain low-trade categories from the Harmonized System.

SUMMARY: The Commission is soliciting the views of interested parties on a proposal before the Review Subcommittee (RSC) of the World Customs Organization (WCO), Brussels, Belgium, to delete certain low-trade headings and subheadings from the international Harmonized Commodity Description and Coding System (Harmonized System or HS).

EFFECTIVE DATE: August 21, 2002.

FOR FURTHER INFORMATION CONTACT: Ronald H. Heller, Office of Tariff Affairs and Trade Agreements (O/TATA) (202/205–2596, E-Mail *rheller@usitc.gov*). The O/TATA fax number is 202/205–2616.

Background

The Harmonized System was established by an international Convention, which, inter alia, provides that the System should be kept up-to-date in light of changes in technology and patterns of international trade. The international HS nomenclature, which is maintained by the WCO, provides a uniform structural basis for the customs tariff and statistical nomenclatures of all major trading countries of the world, including the United States. The Commission, the U.S. Customs Service and the Bureau of the Census are responsible for the development of U.S. technical proposals concerning the HS under section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) (19 U.S.C. 3010). A 1988 notice issued by the United States Trade Representative (53 FR 45646, November 10, 1988), established the Commission as the lead U.S. agency in considering proposals for HS amendments that are intended to ensure that it reflects such changes in technology and trade. The WCO expects to implement the next series of amendments to the HS nomenclature by the year 2007. As part of each review cycle, the RSC considers simplifying the HS by removing lines for which trade falls below a threshold value. HS lines that are eliminated are merged with HS lines containing like products. Noting that the HS has expanded over the years and now comprises 1,244 four-digit headings and

5,224 six-digit subheadings, the Subcommittee requested that the Secretariat examine relevant trade data and develop an initial list of four-digit headings and six-digit subheadings for which world trade in each category did not exceed US$100 million and US$50 million, respectively. Based on preliminary trade data for calendar years 1997–2000 provided by the United Nations Statistical Division, the WCO Secretariat recently published a list of 124 headings and 728 six-digit subheadings that showed world trade below the threshold values. As requested by the RSC, the Secretariat also considered further criteria relating to consistency of low trade and special circumstances (relationship to international conventions, environmental or social concerns, relative importance for developing economies) that might provide justification for retaining an HS item in spite of its low trade value. In this manner, the Secretariat reduced the list of candidates for deletion to 27 four-digit headings and 276 six-digit subheadings. Member countries are invited to examine that ''short list'' of potential deletions and indicate to the Subcommittee which categories should be retained because (1) more recent trade data reveals that the category in fact exceeds the threshold or (2) international concern over environmental, social or economic issues necessitates monitoring global trade on products in the category despite the low volume of trade. At its 26th session (September 2002), the Subcommittee will begin to examine the Secretariat's list and all national requests for retention of individual categories. The following is a list of the 27 headings and 276 subheadings that meet the Secretariat's full criteria for deletion from the HS. We invite the public to submit comments on this list.

Four-Digit Headings Proposed for Deletion

0503	2838	7414	8004
0509	4204	7416	8005
1402	4815	7417	8006
1403	5302	7611	9112
2305	5304	7803	9203
2611	6503	7805	9204
2612	7012	7906	

Six-Digit Subheadings Proposed for Deletion

010310	030265	030561	071130
020820	030266	030563	071420
030191	030373	040520	081030
030233	030376	070910	091030
030261	030377	070952	091040
030263	030542	070970	091050
110210	251319	283610	292112
110230	251621	283670	292222
110422	251622	283920	293010
120710	270720	284110	293610
120730	270760	284120	293921
120760	280511	284150	293929
120924	281123	290314	300110
120926	282420	290362	310270
121110	282520	290515	310320
121210	282611	290614	310410
121230	282620	290714	320630
130110	282731	290715	320643
130214	282733	290820	330111
140410	282734	290942	330114
151540	282735	291213	330121
200320	282736	291242	330122
230220	283020	291421	330123
230670	283030	291522	330126
250621	283323	291523	330130
250629	283326	291534	340410
250820	283522	291535	370220
251311	283523	291731	370520
380520	500390	530210	551433
382420	520631	530290	551439
392072	520632	530410	551592
401013	520633	530490	560420
401036	520634	530511	560710
410310	520635	530519	570251
420610	520641	530521	570252
420690	520642	530529	570259
430130	520643	530590	580310
430170	520644	540320	580390
430213	520645	540610	600510
441131	520823	540620	610110
441139	520853	550610	610311
441223	521012	550992	610312
470411	521022	551322	610319
470419	521042	551332	610321
480230	521052	551333	610411
480910	521121	551342	610412
481430	521122	551343	610421
481610	521129	551413	610792
481630	521141	551431	611110
500310	521143	551432	611410
611720	640330	811230	900620
620321	650692	811240	900662
620510	660310	842520	902740
620792	680222	842850	903130
620910	681130	843352	910112
621131	720280	844841	910620
621310	722520	845620	911220
630252	722693	847040	911290
630292	722694	847220	911410
630293	722910	850530	911420
630311	731413	850920	911440
630611	731910	850930	920410
630621	740110	851921	920420
630631	740120	851929	920910
630639	740323	851940	920920
630641	740722	854340	920993
630649	741420	860620	930610
640191	741490	880110	960420
640230	810195	880190	961490

Copies of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which incorporates the international Harmonized System in its overall structure, can be found on the USITC's World Wide Web (WWW) site, *http://www.usitc.gov.* Hard copies and electronic copies of the HTSUSA can also be found at many of the 1,400 federal Depository Libraries located throughout the United States and its territories; further information about these locations can be found on the WWW at the following location (URL): *http://www.access.gpo.gov/su_docs/fdlp/libpro.html,* or by contacting GPO Access at the Government Printing Office, 1–888–293–6498. Copies of the WCO Secretariat's report on its analysis of trade data and other factors, its list of low-trade HS lines and its indications of suggested deletions (WCO Doc. NR0270E–B1) is available from the USITC Office of Tariff Affairs and Trade Agreements, as indicated above (See **FOR FURTHER INFORMATION CONTACT**). This proposal is part of a comprehensive review of the international HS being carried out by the RSC. Its implementation internationally would not require that domestic tariff rates or statistical coverage be eliminated from the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Any such consequential amendments would be separately considered by the Commission at a later date, pursuant to section 1205 of the 1988 Act. Section 1205 requires that existing duty treatment be retained whenever possible.

Request for Proposals

The Commission is seeking comments on the list of proposed deletions from the HS and, in particular, on those categories for which the United States may request retention. Interested parties, associations and Government agencies should submit specific HS category numbers from the above list which they feel should be retained in the HS and, for each category, the reason for retaining the category in the international system (including, where relevant, trade data).

Deadline

Suggestions must be received no later than the close of business, September 6, 2002, in order to be considered by the Commission.

Written Submissions

All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. TDD Access: Hearing

impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810. World Wide Web Access: This notice, and any subsequent notices published pursuant to section 1210 of the 1988 Act, may be obtained from the ITC Internet web server: *http://www.usitc.gov.*

By order of the Commission.

Issued: August 26, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–22186 Filed 8–29–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services (COPS); Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: New collection; Community Policing Development Proposal Packet.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for an additional 30 days for public comment until September 30, 2002. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Community Policing Development Proposal Packet.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Office of Community Oriented Policing Services Form Number: N/A.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, local and Tribal law enforcement agencies, institutions of higher education, and/or non-profit/profit organizations. Other: None Abstract: The information collected will be used by the COPS Office to determine grantee's eligibility for funding under Community Policing Development initiatives, which address current law enforcement/community needs and emerging law enforcement issues.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 200 responses. The estimated amount of time required for the average respondent to respond is: 8 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,800 hours annually.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: August 27, 2002.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 02–22288 Filed 8–29–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day notice of information collection under review: sworn statement of refugee applying for admission to the United States; Form G–646.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 18, 2002 at 67 FR 19254, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 30, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one of more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection*: Extension of currently approved collection.

(2) *Title of the Form/Collection:* Sworn Statement of Refugee Applying for Admission to the United States.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* G–646. Office of International Affairs, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Households. This information collection provides the grounds of admissibility to the United States as they apply to refugees. The information collected allows the INS to make admissibility determinations for refugees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 75,000 responses at approximately 30 minutes (.50) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 37,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 420 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, 1001 G Street, NW., Washington, DC 20530.

Dated: August 26, 2002.

Richard A. Sloan,

Department Clearance Officer, Immigration and Naturalization Service, United States Department of Justice.

[FR Doc. 02–22181 Filed 8–29–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2225–02; AG Order No. 2610–2002]

RIN 1115–AE26

Extension of the Designation of Burundi Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The designation of Burundi under the Temporary Protected Status (TPS) program will expire on November 2, 2002. This notice extends the Attorney General's designation of Burundi under the TPS program for 12 months until November 2, 2003, and sets forth procedures necessary for nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) with TPS to re-register for the additional 12-month period. Eligible nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) may re-register for TPS and an extension of employment authorization. Re-registration is limited to persons who registered during the initial registration period, which ended on November 3, 1998, who registered during the re-designation registration period, which ended on November 2, 2000, or who registered after that date under the late initial registration provisions, and who timely re-registered under each subsequent extension. Nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) who previously have not applied for TPS may be eligible to apply under the late initial registration provisions.

EFFECTIVE DATES: The extension of the TPS designation for Burundi is effective November 2, 2002, and will remain in effect until November 2, 2003. The 60-day re-registration period begins on August 30, 2002, and will remain in effect until October 29, 2002.

FOR FURTHER INFORMATION CONTACT: Pearl Chang, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service, Room 3040, 425 I Street NW., Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Attorney General Have To Extend the Designation of Burundi Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (Act) states that, at least 60 days before the end of a designation or extension thereof, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General does not determine that the foreign state no longer continues to meet the conditions for designation, the period of designation is extended automatically for 6 months pursuant to section 244(b)(3)(C) of the Act, although the Attorney General may exercise his discretion to extend the designation for a period of 12 or 18 months. 8 U.S.C. 1254a(b)(3)(C).

Why Did the Attorney General Decide To Extend the TPS Designation for Burundi?

On November 4, 1997, the Attorney General designated Burundi under the TPS program for a period of 12 months. 62 FR 59735. The Attorney General has since extended the TPS designation three times and redesignated Burundi once, after determining each time that the conditions warranting such designation continued to be met. *See* 66 FR 46027 (August 31, 2001) (extension); 65 FR 67404 (November 9, 2000) (extension); 64 FR 61123 (November 9, 1999) (extension and redesignation); 63 FR 59334 (November 3, 1998) (extension).

Since the date of the last extension, the Department of Justice and the Department of State (DOS) have continued to review conditions in Burundi. The DOS reports that the armed conflict within Burundi persists: ''Although a transitional government took office in November 2001, Burundi is still undergoing civil war. [The United Nations High Commissioner for Refugees (UNHCR)] recently began facilitating voluntary refugee returns to selected provinces; however, much of the country remains insecure. Government security forces and rebel groups continue to commit serious human rights abuses against civilians, including extrajudicial killings, disappearances, rape, torture, arbitrary arrest and detention, forced displacement, and forced labor.'' State Department Report (July 1, 2002). The DOS states that ''[t]here is no cease-fire in effect despite continuing peace negotiations. Armed rebel groups continue fighting government forces in several areas of the country. Civilian authorities do not maintain effective control of security forces. Rebel attacks on the military are often followed by army reprisals against civilians suspected of cooperating with the insurgents. Rebels reportedly often kill persons for suspected collaboration with

the government and for their refusal to pay 'taxes' to rebels.'' *Id.* The DOS concludes that ''[r]ebel attacks and government counter-attacks occur unpredictably. Serious human rights abuses continue to be committed by both sides. The prospects for a cease-fire in the near future are uncertain. Rebel groups do not support the return of refugees, so that even refugees' return to relatively 'safe' areas is a potential source of instability and further violence.'' *Id.*

Likewise, the Resource Information Center of the Immigration and Naturalization Service (INS/Service) assessed conditions in Burundi and found that ''[r]esolution of the armed conflict, which pervades most of Burundi, and has resulted in massive human rights violations by both government and rebel forces, appears to have no end in sight.'' The INS Resource Information Center Report (July 2, 2002) (RIC Report). The UNHRC reported in March 2002 that violence had increased since October 2001, and ''[w]hile not intense, the conflict in Burundi extends throughout the country with the exception of the provinces of Ngozi and Kirundo * * * [The] country is more at war than at peace. * * * The belligerents on all sides take revenge on the population for its silence, neutrality or complicity with the other camp.'' Report of Special Rapporteur, U.N. Commission on Human Rights (Mar. 7, 2002). The U.S. Committee for Refugees reported in March 2002 that 150,000 Burundis were displaced from their homes between January 2001 and March 2002, including 80,000 in the first 3 months of 2002. U.S. Committee for Refugees Report (Mar. 21, 2002).

There is an ongoing armed conflict within Burundi, and due to such conflict, requiring the return of aliens who are nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) would pose a serious threat to their personal safety. 8 U.S.C.1254a(b)(1)(A). Based on this review, the Attorney General finds that the conditions that prompted designation of Burundi under the TPS program continue to be met. 8 U.S.C. 1254a(b)(3)(A). Furthermore, there exist extraordinary and temporary conditions in Burundi that prevent nationals of Burundi (and aliens having no nationality who last habitually resided in Burundi) from returning home in safety. 8 U.S.C. 1254a(b)(1)(C). Finally, permitting nationals of Burundi to remain temporarily in the United States is not contrary to the national interest of the United States. 8 U.S.C. 1254a(b)(1). On the basis of these findings, the Attorney General concludes that the TPS designation for Burundi should be extended for an additional 12-month period. 8 U.S.C 1254a(b)(3)(C).

If I Currently Have TPS Benefits Through the Burundi TPS Program, Must I Still Re-Register for TPS?

Yes. If you already have received TPS benefits through the Burundi TPS program, your benefits will expire on November 2, 2002. Accordingly, you must re-register for TPS in order to maintain your benefits through November 2, 2003. See the following re-registration instructions. The TPS benefits include temporary protection against removal from the United States, as well as work authorization, during the TPS designation period and any extension thereof. 8 U.S.C. 1254a(a)(1).

If I am Currently Registered for TPS, How Do I Re-Register for an Extension?

All persons previously granted TPS benefits under the Burundi program who wish to maintain such benefits must apply for an extension by filing (1) Form I–821, Application for Temporary Protected Status, without the filing fee; (2) Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches × 1½ inches). See the chart below to determine whether you must submit the one hundred and twenty dollar ($120) filing fee with the Form I–765. Children beneficiaries of TPS, who have reached the age of 14 but were not previously fingerprinted, must pay the fifty dollar ($50) fingerprint fee upon their next application for extension.

Submit the re-registration package and applicable fee, if any, to the Service district office that has jurisdiction over your place of residence during the 60-day re-registration period that begins August 30, 2002, and will remain in effect until October 29, 2002.

If	Then
You are applying for an Employment Authorization Document that is valid through November 2, 2003 . . .	You must complete and file Form I–765, Application for Employment Authorization, with the $120 fee.
You already have an Employment Authorization Document or do not require such a document . . .	You must complete and file Form I–765 with no fee.
You are applying for an Employment Authorization Document and are requesting a fee waiver . . .	You must complete and file: (1) Form I–765, with no fee, and (2) a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

How Does an Application for TPS Affect my Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. A national of Burundi (or alien having no nationality who last habitually resided in Burundi) who is otherwise eligible for TPS and has applied for, or plans to apply for, asylum but who has not yet been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not affect an applicant's eligibility to apply for TPS, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2); 8 U.S.C. 1254a(c)(2)(B)(i).

Does This Extension Allow Nationals of Burundi (or Aliens Having No Nationality Who Last Habitually Resided in Burundi) Who Entered the United States After November 9, 1999, To File for TPS?

No. This is a notice of an extension of the TPS designation for Burundi, not a notice of redesignation of Burundi under the TPS program. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS availability to those who are not already TPS class members. To be eligible for benefits under this extension, nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) must have been continuously physically present and continuously resided in the United States since November 9, 1999.

Is Late Initial Registration Possible?

Yes. Some persons may be eligible for late initial registration under 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) Be a national of Burundi (or an alien who has no nationality and who last habitually resided in Burundi);

(2) Have been continuously physically present in the United States since November 9, 1999;

(3) Have continuously resided in the United States since November 9, 1999; and

(4) Be both admissible as an immigrant, except as otherwise provided under section 244(c)(2)(A) of the Act, and also not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that, during the redesignation registration period from November 9, 1999, through November 2, 2000, he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal,

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal,

(3) Was a parolee or had a pending request for reparole, or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must file an application for late registration within a 60-day period immediately following the expiration or termination of the conditions described above. 8 CFR 244.2(g).

Notice of Extension of Designation of Burundi Under the TPS Program

By the authority vested in me as Attorney General under sections 244(b)(1), (b)(3)(A), and (b)(3)(C) of the Act, I have consulted with the appropriate government agencies and determine that the conditions that prompted designation of Burundi for TPS continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, I order as follows:

(1) The designation of Burundi under section 244(b) of the Act is extended for an additional 12-month period from November 2, 2002, to November 2, 2003. 8 U.S.C. 1254a(b)(3)(C).

(2) I estimate that there are approximately thirteen (13) nationals of Burundi (or aliens who have no nationality and who last habitually resided in Burundi) who are eligible for re-registration.

(3) To maintain TPS, a national of Burundi (or an alien having no nationality who last habitually resided in Burundi) who previously has applied for or received TPS benefits must re-register for TPS during the 60-day re-registration period from August 30, 2002, until October 29, 2002.

(4) To re-register, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches by 1½ inches). There is no fee for a Form I–821 filed as part of the re-registration application. If the applicant requests employment authorization documentation, he or she must submit one hundred and twenty dollars ($120) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization documentation must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee. The fifty dollar ($50) fingerprint fee is required only for children beneficiaries of TPS who have reached the age of 14 but were not previously fingerprinted. Failure to re-register without good cause will result in the withdrawal of TPS. 8 CFR 244.17(c). Some persons who had not previously applied for TPS may be eligible for late initial registration under 8 CFR 244.2.

(5) Information concerning the Burundi TPS program will be available at local Service offices upon publication of this notice and the INS National Customer Service Center at 1–800–375–5283. This information will also be published on the INS Web site at *http://www.ins.usdoj.gov*.

Dated: August 26, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–22210 Filed 8–29–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2226–02; AG Order No. 2611–2002]

RIN 1115–AE26

Extension of the Designation of Sudan Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The designation of Sudan under the Temporary Protected Status (TPS) program will expire on November 2, 2002. This notice extends the Attorney General's designation of Sudan under the TPS program for 12 months until November 2, 2003, and sets forth procedures necessary for nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) with TPS to re-register for the additional 12-month period. Eligible nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) may re-register for TPS and an extension of employment authorization. Re-registration is limited to persons who registered during the initial registration period, which ended on November 3, 1998, registered during the re-designation registration period, which ended on November 2, 2000, or registered after that date under the late initial registration provisions; and who timely re-registered under each subsequent extension. Nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) who previously have not applied for TPS may be eligible to apply under the late initial registration provisions.

EFFECTIVE DATES: The extension of the TPS designation for Sudan is effective November 2, 2002, and will remain in effect until November 2, 2003. The 60-day re-registration period begins on August 30, 2002, and will remain in effect until October 29, 2002.

FOR FURTHER INFORMATION CONTACT: Pearl Chang, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street NW., Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What authority does the Attorney General have to extend the designation of Sudan under the TPS program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (Act) states that, at least 60 days before the end of a designation or extension thereof, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General does not determine that the foreign state no longer continues to meet the conditions for designation, the period of designation is extended automatically for 6 months pursuant to section 244(b)(3)(C) of the Act, although the Attorney General may exercise his discretion to extend the designation for a period of 12 to 18 months. 8 U.S.C. 1254a(b)(3)(C)

Why did the Attorney General decide to extend the TPS designation for Sudan?

On November 4, 1997, the Attorney General designated Sudan under the TPS program for a period of 12 months. 62 FR 59737. The Attorney General has since extended the TPS designation three times and redesignated Sudan once, after determining each time that the conditions warranting such designation continued to be met. See 66

FR 46031 (August 31, 2001) (extension); 65 FR 67407 (November 9, 2000) (extension); 64 FR 61128 (November 9, 1999) (extension and redesignation); and 63 FR 59337 (November 3, 1998) (extension).

Since the date of the last extension, the Departments of Justice and State have continued to review conditions in Sudan. The Department of State reports that ''[c]ivil war continues to endanger thousands of Sudanese civilians. Despite cease-fire arrangements in the Nuba Mountains and periodically in Bahr el Ghazal, fighting between government and rebel forces has intensified in several regions, especially those rich in oil. The Western Upper Nile region is of particular concern. Peace negotiations recently began between the government and rebel leaders; however, past efforts have led to repeated failures. The government's human rights record remains extremely poor, and includes extrajudicial killings, disappearances, arbitrary arrest and detention, rape, slavery, forced labor, forced conscription of male children, and severely restricted freedom of assembly, association, religion, speech, and movement. Rebel groups also are responsible for serious human rights abuses, including extrajudicial killings, beatings, rapes, arbitrary detention, and forced conscription of boys.'' State Department Report (July 1, 2002) (State Department Report). The Department of State concludes that ''Sudan's civil war threatens civilians both directly, as they suffer violent attacks, abductions and forced displacement from both sides of the conflict, and indirectly, as looting and attacks on humanitarian operations endanger their food security and health.'' *Id.*

Likewise, the Resource Information Center of the Immigration and Naturalization Service (INS/Service) recently reported that ''[a]lthough a window of opportunity exists to end Sudan's long internal conflict, and [despite] efforts to broker confidence-building agreements between the government and the opposition Sudan People's Liberation Movement/Army (SPLM/A), no end to the war appears in sight. Intensified conflict, particularly in oil-producing areas of the south, has contributed to serious human rights violations and a worsening in the conditions of life for people living in these areas.'' The INS Resource Information Center Report (July 3, 2002) (RIC Report). The United Nations Special Rapporteur on Human Rights in Sudan reported in January 2002 that ''the overall human rights situation has not improved.'' Report of Special Rapporteur, U.N. Commission on Human Rights (Jan. 23, 2002). The Sudanese Government has forcibly removed tens of thousands of southern Sudanese from oilfield areas to make the areas safe from attack, denied humanitarian agencies access to vulnerable people in rebel-held areas, and on many occasions bombed civilians waiting to receive humanitarian assistance. RIC Report. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) reported in November 2001 that the armed conflict ''continues to create widespread displacement of civilian populations, destroy infrastructure, and obliterate assets such as livestock and crops. Agricultural and pastoral activities among farming communities are continually disrupted in the areas of conflict, including during the all-important planting and harvesting seasons. In these and other areas the vagaries of climate and weather impose further pressures trough drought and flood, giving rise to tension and conflict through competition for scarce resources of food, water, and pasture for livestock.'' UN OCHA Report (Nov. 26, 2001).

Based on this review, the Attorney General finds that the conditions that prompted designation of Sudan under the TPS program continue to be met. 8 U.S.C. 1254a(b)(3)(A). There is an ongoing armed conflict within Sudan and, due to such conflict, requiring the return of aliens who are nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) would pose a serious threat to their personal safety. 8 U.S.C. 1254a(b)(3)(A). Furthermore, there exist extraordinary and temporary conditions in Sudan that prevent nationals of Sudan (and aliens having no nationality who last habitually resided in Sudan) from returning home in safety. 8 U.S.C. 1254a(b)(1)(C). Finally, permitting nationals of Sudan to remain temporarily in the United States is not contrary to the national interest of the United States. 8 U.S.C. 1254a(b)(1). On the basis of these findings, the Attorney General concludes that the TPS designation for Sudan should be extended for a period of 12 months.

If I currently have TPS through the Sudan TPS program, must I still re-register for TPS?

Yes. If you already have received TPS benefits through the Sudan TPS program, your benefits will expire on November 2, 2002. Accordingly, you must re-register for TPS in order to maintain your benefits through November 2, 2003. See the following re-registration instructions. The TPS benefits include temporary protection against removal from the United States, as well as work authorization, during the TPS designation period and any extension thereof. 8 U.S.C. 1254a(a)(1).

If I am currently registered for TPS, how do I re-register for an extension?

Persons previously granted TPS under the Sudan program may apply for an extension by filing (1) Form I–821, Application for Temporary Protected Status, without the fee; (2) Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches × 1½ inches). To determine whether you must submit the one hundred and twenty dollar ($120) filing fee with the Form I–765, see the chart below. Children beneficiaries of TPS, who have reached the age of 14 but were not previously fingerprinted, must pay the fifty dollar ($50) fingerprint fee upon their next application for extension.

Submit the re-registration package and applicable fee, if any, to the Service district office that has jurisdiction over your place of residence during the 60-day re-registration period that begins August 30, 2002, and will remain in effect until October 29, 2002.

If	Then
You are applying for an Employment Authorization Document that is valid through November 2, 2003 . . .	You must complete and file Form I–765, Application for Employment Authorization, with the $120 fee.
You already have an Employment Authorization Document or do not require such a document. . .	You must complete and file Form I–765, with no filing fee.
You are applying for an Employment Authorization Document and are requesting a fee waiver. . .	You must complete and file: (1) Form I–765, with no fee and (2) a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

How Does an Application for TPS Affect my Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. A national of Sudan (or alien having no nationality who last habitually resided in Sudan) who is otherwise eligible for TPS and has applied for, or plans to apply for, asylum but who has not yet been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not affect an applicant's eligibility to apply for TPS, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2); 8 U.S.C. 1254a(c)(2)(B)(i).

Does This Extension Allow Nationals of Sudan (or Aliens Having No Nationality Who Last Habitually Resided in Sudan) Who Entered the United States After November 9, 1999, To File for TPS:

No. This is a notice of an extension of the TPS designation for Sudan, not a notice of redesignation of Sudan under the TPS program. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand Sudan availability to those who are not already TPS class members. To be eligible for benefits under this extension, nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) must have been continuously physically present and continuously resided in the United States since November 9, 1999.

Is Late Initial Registration Possible?

Yes. Some persons may be eligible for late initial registration under 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) Be a national of Sudan (or an alien who has no nationality and who last habitually resided in Sudan);

(2) Have been continuously physically present in the United States since November 9, 1999;

(3) Have continuously resided in the United States since November 9, 1999; and

(4) Be both admissible as an immigrant, except as otherwise provided under section 244(c)(2)(A) of the Act, and also not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that, during the redesignation registration period from November 9, 1999, through November 2, 2000, he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal,

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal,

(3) Was a parolee or had a pending request for reparole, or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must file an application for late registration within a 60-day period immediately following the expiration of termination of the conditions described above. 8 CFR 244.2(g).

Notice of Extension of Designation of Sudan Under the TPS Program

By the authority vested in me as Attorney General under sections 244(b)(1), (b)(3)(A), and (b)(3)(C) of the Act, I have consulted with the appropriate government agencies and determine that the conditions that prompted designation of Sudan for TPS continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, I order as follows:

(1) The designation of Sudan under section 244(b) of the Act is extended for an additional 12-month period from November 2, 2002, through November 2, 2003. 8 U.S.C. 1254a(b)(3)(C).

(2) I estimate that there are approximately 552 nationals of Sudan (or aliens who have no nationality and who last habitually resided in Sudan) who are eligible for re-registration.

(3) To maintain TPS, a national of Sudan (or an alien having no nationality who last habitually resided in Sudan) who previously has applied for or received TPS benefits must re-register for TPS during the 60-day re-registration period from August 30, 2002 until October 29, 2002.

(4) To re-register, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches by 1½ inches). There is no fee for a Form I–821 filed as part of the re-registration application. If the applicant requests employment authorization documentation, he or she must submit one hundred and twenty dollars ($120) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization documentation must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee. The fifty dollar ($50) fingerprint fee is required only for children beneficiaries of TPS who have reached the age of 14 but were not previously fingerprinted. Failure to re-register without good cause will result in the withdrawal of TPS. 8 CFR 244.17(c). Some persons who had not previously applied for TPS may be eligible for late initial registration under 8 CFR 244.2.

(5) Information concerning the Sudan TPS program will be available at local Service offices upon publication of this notice and the INS National Customer Service Center at 1–800–375–5283. This information will also be published on the INS Web site at *http://www.ins.usdoj.gov.*

Dated: August 26, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–22211 Filed 8–29–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Availability of Benefit Accuracy Measurement Program Results

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of availability of the Unemployment Insurance (UI) Benefit Accuracy Measurement (BAM) program data for calendar year (CY) 2001.

SUMMARY: UI BAM program data for CY 2001 are published as part of the UI PERFORMS Annual Report, which is available on the ETA Office of Workforce Security Internet site—*workforcesecurity.doleta.gov/unemploy/pdf/ar_01.pdf.* An analytical summary of BAM data is available at *workforcesecurity.doleta.gov/unemploy/pdf/bamcy2001.pdf.*

The UI PERFORMS Annual Report also includes data from the Benefits Timeliness and Quality and Tax Performance System programs. UI PERFORMS is the Department of Labor's management system for promoting continuous improvement in UI performance. UI PERFORMS performance measures are designated either Tier I, for which minimum performance criteria have been established, or Tier II, for which no minimum performance standards have

been established. The BAM paid claims accuracy rate is a Tier II measure.

States are not required to publish their BAM program data; however, persons wanting clarification or additional information concerning a specific state's report are encouraged to contact the individuals identified in the Appendix.

FOR FURTHER INFORMATION CONTACT: Andrew Spisak, Office of Workforce Security, Division of Performance Management, 202–693–3196 (this is not a toll free number) or e-mail: *aspisak@doleta.gov.*

SUPPLEMENTARY INFORMATION: State Workforce Agencies (SWA) in the 50 states, the District of Columbia, and Puerto Rico. select weekly random samples of UI benefit payments. The BAM program staff collects information about these payments by contacting claimants, employers, and third parties to determine whether the correct amounts of UI benefits were paid in accordance with state law, policy, and procedure. The results of the payment audits are recorded in automated databases in each state and in the Department of Labor's National Office in Washington, DC.

The Department of Labor publishes results from the BAM investigations annually. Five items are reported for each SWA participating in the BAM program: (1) The amount of UI benefits paid to the population of claimants; (2) the size of the BAM samples (number of completed cases); (3) the percentage of proper payments; (4) the percentage of overpayments; and (5) the percentage of underpayments in the population estimated from the BAM investigations. Ninety-five percent confidence intervals, which measure the precision of the payment accuracy estimates, are reported for each of the three percentages. CY 2001 BAM data for Colorado and Puerto Rico are not published because these SWAs did not complete a sufficient number of sample cases to produce statistically reliable estimates.

The CY 2001 UI PERFORMS Annual Report also includes background information and the data collection methodology for the BAM program. Graphs that display the distribution of overpayment rates for all states, national overpayment rates by year since CY 1988, and national cause and responsibility data for overpayments for the last nine years are also provided.

Additional BAM data are available at *workforcesecurity.doleta.gov/unemploy/pdf/bamcy2001.pdf.* This summary includes cause and responsibility data for both overpayments and underpayments, changes in state overpayment and underpayment rates between CY 2000 and CY 2001, and additional rates for recoverable overpayments and overpayment attributable to fraud or agency responsibility.

Readers are strongly cautioned that it may be misleading to compare one state's BAM overpayment and underpayment rates with the rates of other states. No two states' laws, regulations, and policies specifying eligibility conditions are identical. Differences among states in these conditions influence the potential for error. States with complex or strict eligibility conditions tend to have higher overpayment rates than states with simpler provisions because there is a greater chance that these conditions will not be met.

The underpayment rates estimated from BAM paid claims samples represent underpayments only for those claimants eligible for UI benefits. Underpayments also result from UI claims that have been erroneously denied. SWA BAM units began selecting samples of denied UC claims in August 2001. Because Denied Claims Accuracy (DCA) data are available for less than half of CY 2001, they are not included in the CY 2001 UI PERFORMS Annual Report. The Department plans to publish CY 2002 accuracy rates for monetary, separation, and nonseparation denials, based on a complete year of sampling and DCA investigation.

Signed at Washington, DC, on August 26, 2002.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

Appendix—Unemployment Insurance Benefit Accuracy Measurement State Contacts

Alabama

Debbie C. Richbourg, Alabama Department of Industrial Relations, Benefits Unit, 649 Monroe Street, Montgomery, AL 36131. (334) 242–8133. e-mail: *drichbourg@dir.state.al.us.*

Alaska

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Arizona

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Arkansas

Fred D. Carter, Program Operations Manager, Employment Security Department, P.O. Box 2981, Little Rock, AR 72203–2981. (501) 682–2142. e-mail: *fred.carter.aesd@mail.state.ar.us.*

Hugh Havens, Assistant Director for Unemployment Insurance, Arkansas Employment Security Department, P.O. Box 2981, Little Rock, AK 72203–2981. (501) 682–3200. e-mail: *hugh.havens.aesd@mail.state.ar.us.*

California

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Colorado

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Connecticut

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Delaware

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District of Columbia

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Florida

Sarah G. Peck, Agency for Workforce Innovation, Caldwell Building, 107 E. Madison Street, Tallahassee, Florida 32399. (850) 921–3425. e-mail: *Sarah.Peck@awi.state.fl.us.*

Georgia

Paul D. Crawford, Chief, Quality Assurance, Georgia Department of Labor, 148 International Blvd., NE., Suite 822, Atlanta, GA 30305. (404) 656–7242. e-mail: *Paul.Crawford@dol.state.ga.us.*

Hawaii

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Idaho

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Illinois

Joseph Wojcik, Manager, Quality Assurance and Compliance Review, Illinois

Department of Employment Security, 401 South State Street, Room 715, Chicago, IL 60605. (312) 793–1175. e-mail: *Jwojcik@ides.state.il.us*.

Indiana

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Iowa

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Kansas

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Kentucky

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Louisiana

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Maine

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Maryland

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Massachusetts

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Michigan

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Minnesota

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Mississippi

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Missouri

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Montana

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Nebraska

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Nevada

Karen Rhodes, Public Information Officer, Department of Employment, Training and Rehabilitation, 500 East Third Street, Carson City, NV 89713. (775) 684–4660. fax: (775) 684–4663. e-mail: *ksrhodes@nvdetr.org*.

New Hampshire

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New Jersey

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New Mexico

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New York

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North Carolina

Stan Linzsey, Employment Security Commission, Quality Control Unit, P.O. Box 25903, Raleigh, NC 27611. (919) 733–9104.

North Dakota

Bill Steckler, Job Service North Dakota, 1000 East Divide Avenue, P.O. Box 5507, Bismarck, ND 58506–5507. (701) 328–3355. e-mail: *bsteckle@state.nd.us*.

Ohio

Florence (Marge) Fields, Chief, UC Technical Services, ODJFS, 145 S. Front Street, Columbus, OH 43215. (614) 466–4581. e-mail: *FIELDM01@odjfs.state.oh.us*.

Oklahoma

Terry W. McHale, BAM Supervisor, Oklahoma Employment Security Commission, 715 S. Service Road, Moore, OK 73160. (405) 793–7286.

Oregon

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Pennsylvania

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Puerto Rico

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South Carolina

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Tennessee

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Texas

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Utah

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Vermont

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Virginia

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Washington

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West Virginia

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Wisconsin

John Mand, QC Section Chief, Wisconsin Department of Workforce Development, UI Division, 6083 North Teutonia Avenue, P.O. Box 09999, Milwaukee, WI 53209. (414) 438–2055. e-mail: *mandj@dwd.state.wi.us.*

Wyoming

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[FR Doc. 02–22196 Filed 8–29–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Delaware
- DE020001 (Mar. 1, 2002)
- DE020002 (Mar. 1, 2002)
- DE020004 (Mar. 1, 2002)
- DE020005 (Mar. 1, 2002)
- DE020009 (Mar. 1, 2002)

Pennsylvania
- PA020021 (Mar. 1, 2002)

West Virginia
- WV020002 (Mar. 1, 2002)
- WV020003 (Mar. 1, 2002)

Volume III

Florida
- FL020017 (Mar 1, 2002)

Volume IV

Illinois
- IL020005 (Mar 1, 2002)

Michigan
- MI020052 (Mar. 1, 2002)
- MI020062 (Mar. 1, 2002)
- MI020063 (Mar. 1, 2002)
- MI020064 (Mar. 1, 2002)
- MI020065 (Mar. 1, 2002)
- MI020066 (Mar. 1, 2002)
- MI020067 (Mar. 1, 2002)
- MI020068 (Mar. 1, 2002)
- MI020069 (Mar. 1, 2002)
- MI020070 (Mar. 1, 2002)
- MI020071 (Mar. 1, 2002)
- MI020072 (Mar. 1, 2002)
- MI020073 (Mar. 1, 2002)
- MI020074 (Mar. 1, 2002)
- MI020075 (Mar. 1, 2002)

Volume V

Kansas
- KS020006 (Mar. 1, 2002)
- KS020008 (Mar. 1, 2002)
- KS020012 (Mar. 1, 2002)
- KS020022 (Mar. 1, 2002)
- KS020069 (Mar. 1, 2002)
- KS020070 (MAR. 1, 2002)

Texas
- TX020002 (Mar. 1, 2002)
- TX020051 (Mar. 1, 2002)

Volume VI

Alaska
- AK020001 (Mar. 1, 2002)
- AK020002 (Mar. 1, 2002)
- AK020003 (Mar. 1, 2002)

AK020006 (Mar. 1, 2002)
AK020008 (Mar. 1, 2002)
Idaho
ID020001 (Mar. 1, 2002)
Montana
MT020002 (Mar. 1, 2002)
Oregon
OR020001 (Mar. 1, 2002)
OR020017 (Mar. 1, 2002)
Washington
WA020002 (Mar. 1, 2002)
WA020003 (Mar. 1, 2002)
WA020007 (Mar. 1, 2002)
WA020023 (Mar. 1, 2002)

Volume VII

None

General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 22nd day of August 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–21765 Filed 8–29–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Notice of Signing of a Memorandum of Understanding Between the Federal Aviation Administration (FAA) and the Occupational Safety and Health Administration (OSHA)

August 30, 2002.

AGENCIES: Occupational Safety and Health Administration, Department of Labor and Federal Aviation Administration, Department of Transportation.

SUMMARY: The Federal Aviation Administration (FAA) and the Occupational Safety and Health Administration (OSHA) entered into a Memorandum of Understanding (MOU), effective March 22, 2002. The purpose of the MOU is to facilitate coordination and cooperation concerning the employee protection provisions of the Aviation Whistleblower Protection Program, 49 U.S.C. 42121. Both agencies agree that administrative efficiency and sound enforcement policies will be maximized by this cooperation and the timely exchange of information in areas of mutual interest. The text of the MOU is set forth below.

FOR FURTHER INFORMATION CONTACT: John Spear, Occupational Safety and Health Administration, Room N03468, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2187. This is not a toll-free number.

Authority: 49 U.S.C. 42121; Secretary of Labor's Order No. 3–2000, 65 FR 50017 (August 16, 2000).

Signed at Washington, DC, this 15 day of August, 2002.

For the Occupational Safety and Health Administration.

John L. Henshaw,

Assistant Secretary, Occupational Safety and Health Administration.

Memorandum of Understanding Between The Federal Aviation Administration, U.S. Department of Transportation and The Occupational Safety and Health Administration, U.S. Department of Labor

I. Purpose

The purpose of this Memorandum of Understanding (MOU) is to facilitate coordination and cooperation concerning the protection of employees who provide air safety information under the provisions of Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 42121.

II. Background

The Aviation Whistleblower Protection Program, 49 U.S.C. 42121, prohibits air carriers, air carrier contractors, and air carrier subcontractors from discharging an employee or otherwise discriminating against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—(1) Provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or Federal Government information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration (FAA) or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States; (2) has filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any order, regulation, or standard of FAA or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States; (3) testified or is about to testify in such a proceeding; or (4) assisted or participated or is about to assist or participate in such a proceeding.

FAA and the Secretary of Labor, through the Occupational Safety and Health Administration (OSHA), both have responsibilities related to 49 U.S.C. 42121. FAA has responsibility to investigate complaints related to air carrier safety and has authority under the FAA's statute to enforce air safety regulations and issue sanctions to airmen and air carriers for noncompliance with these regulations. FAA enforcement action may include air carrier and/or airman certificate suspension and/or revocation and/or the imposition of civil penalties. Additionally, FAA may issue civil penalties for violations of 49 U.S.C. 42121. OSHA has the responsibility to investigate employee complaints of discrimination and may order a violator to take affirmative action to abate the violation, reinstate the complainant to his or her former position with back pay, and award compensatory damages, including attorney fees.

Although FAA and OSHA will carry out their statutory responsibilities independently, the agencies agree that administrative efficiency and sound enforcement policies will be maximized by cooperation and the timely exchange of information in areas of mutual interest.

III. Process for Coordination

This MOU sets forth a process that FAA and OSHA agree to follow.

FAA and OSHA will establish a procedure for coordinating and supporting enforcement of 49 U.S.C. 42121. OSHA agrees to promptly notify the FAA national headquarters Whistleblower Protection Program point of contact of any discrimination complaints

filed with the Department of Labor (DOL) under 49 U.S.C. 42121. OSHA will promptly provide FAA with a copy of the complaint, findings and preliminary orders, investigation reports, and orders associated with any hearing or administrative appeal related to the complaint. OSHA will also keep FAA currently informed of the status of any administrative or judicial proceeding seeking review of an order of DOL issued under 49 U.S.C. 42121.

When an individual directly notifies FAA of alleged discrimination that involves air carrier safety, FAA will investigate the safety complaint and will provide OSHA with a copy of the individual's allegations. FAA will inform the individual that a personal remedy for discrimination is available only through DOL and that the individual should personally contact DOL. FAA will provide the individual with the local address and telephone number of the nearest OSHA office and advise the individual that the law requires that complaints be filed with OSHA within ninety (90) days of the alleged discrimination.

FAA and OSHA agree to cooperate with each other to the fullest extent possible in every case of alleged discrimination involving an employee of air carrier or air carrier contractor or subcontractor of an air carrier. Each agency agrees to share all information it obtains relating to each complaint of discrimination and will adopt mutually agreeable procedures for the protection of information that either agency deems confidential.

Each agency shall designate and maintain points of contact within its national headquarters and regional offices for purposes of implementation of this MOU and continued program oversight. A national headquarters Aviation Whistleblower Protection Program point of contact will be established and identified by each agency within ten (10) days after the effective date of this agreement. Regional office points of contact for each agency will be identified within six (6) months after the effective date of this agreement. Matters affecting program procedures and policy issues will be handled by the respective national headquarters office of each agency.

IV. Implementation

The FAA official responsible for implementation of this Agreement is the FAA Administrator; the DOL official responsible for implementation of this Agreement is the OSHA Assistant Secretary.

V. Amendment and Termination

This Agreement may be amended or modified upon written agreement by both parties to the Agreement. The Agreement may be terminated upon ninety (90) days written notice by either party.

VI. Legal Effect

Nothing in this MOU is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory functions, including the OSHA authority under the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*, nor is it intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person. This MOU is effective upon signature by both parties.

Dated: March 11, 2002.

Jane F. Garvey,

Administraton, Federal Aviation Administration, U.S. Department of Transportation.

Dated: March 22, 2002.

John L. Henshaw,

Assistant Secretary, Occupational Safety and Health, U.S. Department of Labor.

[FR Doc. 02–22280 Filed 8–29–02; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. GE2002–1]

Request for Comments on Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Nursing Homes

AGENCY: Occupational Safety and Health Administration (OSHA); Department of Labor.

ACTION: Request for comments.

SUMMARY: The Department of Labor is inviting comments on its draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Nursing Homes (draft guidelines). The draft guidelines are available on OSHA's Web site and through its publications office. Interested persons may submit written comments on the draft guidelines. The Department will also hold a stakeholder meeting where the public will be invited to express its views on the draft guidelines.

DATES: *Written Comments:* Comments must be submitted by the following dates: *Hard Copy.* Your comments must be submitted (postmarked or sent) by September 30, 2002.

Facsimile and electronic transmission: Your comments must be sent by September 30, 2002.

(Please see the **SUPPLEMENTARY INFORMATION** below for additional information on submitting comments.)

Stakeholder meeting. A one-day stakeholder meeting will be held in the Washington, DC metropolitan area to discuss the draft guidelines. The exact location and date of the stakeholder meeting will be announced following the close of the comment period. OSHA requests that interested parties submit their intention to participate in the stakeholder meeting through express delivery, hand delivery, messenger service, fax or electronic means by September 19, 2002.

ADDRESSES:

I. Submission of Comments and Intention To Participate in Stakeholder Meeting

Regular mail, express delivery, hand-delivery, and messenger service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. GE2002–1, Room N–2625, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2350. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST. You must submit one copy of your intent to participate in the meeting by express deliver, hand deliver, or messenger service to the above address.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this document, Docket No. GE2002–1, in your comments. Intention to participate in the stakeholder meeting may also be faxed.

Electronic: You may submit comments (but not attachments) and your intention to participate in the stakeholder meeting through the Internet at *http://ecomments.osha.gov/.* (Please see the **SUPPLEMENTARY INFORMATION** below for additional information on submitting comments.)

II. Obtaining Copies of the Draft Guidelines

The draft guidelines for the nursing home industry are available for downloading from OSHA's Web site at *www.osha.gov.* A printed copy of the draft guidelines is available from the OSHA Publications Office, Room N–3101, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, or by telephone at (800) 321–OSHA (6742). You may fax your request for a copy of the draft guidelines to (202) 693–2498.

FOR FURTHER INFORMATION CONTACT: Steven F. Witt, OSHA Directorate of Standards and Guidance, Room N–3718, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–1950.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on This Notice and Internet Access to Comments

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or

(3) electronically through the OSHA webpage. Please note that you cannot attach materials such as studies or journal articles to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments and intentions to participate in stakeholder meetings by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

All comments and submissions will be available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions will be posted on OSHA's Web site at *www.osha.gov.* OSHA cautions you about submitting personal information such as social security numbers and birth dates. Contact the OSHA Docket Office at (202) 693–2350 for information about materials not available through the OSHA webpage and for assistance in using the webpage to locate docket submissions.

II. Background

On April 5, 2002, the Department of Labor announced a four-pronged comprehensive approach for addressing muskuloskeletal disorders (MSDs). One of those prongs called for OSHA to develop industry or task-specific guidelines. OSHA's first industry-specific guidelines will address MSD hazards in the nursing home industry.

The draft guidelines contain an introduction and three main sections. The introduction provides an overview of the nature and scope of the problem of MSDs in nursing homes. It also explains the role of ergonomics in reducing the incidence of these injuries. The three main sections set out the major components of an effective ergonomics process:

- *Management Practices*—Includes a discussion of management commitment and employee participation, ergonomics training, occupational health management, and methods for evaluating a nursing home's ergonomics program.
- *Worksite Analysis*—Describes methods of identifying and evaluating ergonomic stressors.
- *Control Methods*—Presents 49 methods that can be used to control exposure to ergonomic stressors in nursing homes. The control methods are presented with drawings showing proper use, and with recommendations for when to use a specific control method.

OSHA encourages interested parties to comment on all aspects of the draft guidelines.

III. Stakeholder Meeting

Following the close of the comment period, OSHA will be holding a stakeholder meeting in the Washington, DC metropolitan area. In a future **Federal Register** notice, the Department will announce the date and precise location of the stakeholder meeting.

This notice was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under sections 4 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 657).

Issued at Washington, DC, this 27th day of August, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–22285 Filed 8–29–02; 8:45 am]

BILLING CODE 4510–26–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2002–8 CARP CD 2000]

Ascertainment of Controversy for the 2000 Cable Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice with request for comments and notices of intention to participate.

SUMMARY: The Copyright Office of the Library of Congress directs all claimants to royalty fees collected for calendar year 2000 under the section 111 cable statutory license to submit comments as to whether a Phase I or Phase II controversy exists as to the distribution of those fees, and a Notice of Intention to Participate in a royalty distribution proceeding.

DATES: Comments and Notices of Intention to Participate are due on September 30, 2002.

ADDRESSES: If sent by mail, an original and five copies of written comments and a Notice of Intention to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies should be brought to the Office of the General Counsel, James Madison Memorial Building, Room 403, First and Independence Ave., SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panels, PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Each year cable systems submit royalties to the Copyright Office for the retransmission to their subscribers of over-the-air broadcast signals. These royalties are, in turn, distributed in one of two ways to copyright owners whose works were included in a retransmission of an over-the-air broadcast signal and who timely filed a claim for royalties with the Copyright Office. The copyright owners may either negotiate the terms of a settlement as to the division of the royalty funds, or the Librarian of Congress may convene a Copyright Arbitration Royalty Panel (''CARP'') to determine the distribution of the royalty fees that remain in controversy. *See* 17 U.S.C. chapter 8.

During the pendency of any proceeding, the Librarian of Congress may distribute any amounts that are not in controversy, provided that sufficient funds are withheld to cover reasonable administrative costs and to satisfy all claims with respect to which a controversy exists under his authority set forth in section 111(d)(4) of the Copyright Act, title 17 of the United States Code. *See,* e.g., Orders, Docket No. 2000–6 CARP CD 98 (dated October 12, 2000) and Docket No. 99–5 CARP CD 97 (dated October 18, 1999). However, the Copyright Office must, prior to any distribution of the royalty fees, ascertain who the claimants are and the extent of any controversy over the distribution of the royalty fees.

The CARP rules provide that:

> In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, after the time period for filing claims, publish in the **Federal Register** a notice requesting each claimant on the claimant list to negotiate with each other a settlement of their differences, and to comment by a date certain as to the existence of controversies with respect to the royalty funds described in the notice. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a notice of intention to participate.

37 CFR 251.45(a). The Copyright Office may publish this notice on its own initiative, *see,* e.g., 64 FR 23875 (May 4, 1999); in response to a motion from an

interested party, *see,* e.g., 65 FR 54077 (September 6, 2000), or in response to a petition requesting that the Office declare a controversy and initiate a CARP proceeding. In this case, the Office has received a motion for a partial distribution of the 2000 cable royalty fees.

On July 31, 2002, representatives of the Phase I claimant categories to which royalties have been allocated in prior cable distribution proceedings filed a motion with the Copyright Office for a partial distribution of the 2000 cable royalty fund. The Office will consider this motion after each interested party has been identified by filing the Notice of Intention to Participate requested herein and had an opportunity to file responses to the motion.

1. Comments on the Existence of Controversies

Before commencing a distribution proceeding or making a partial distribution, the Librarian of Congress must first ascertain whether a controversy exists as to the distribution of the royalty fees and the extent of those controversies. 17 U.S.C. 803(d). Therefore, the Copyright Office is requesting comment on the existence and extent of any controversies, at Phase I and Phase II, as to the distribution of the 2000 cable royalty fees.

In Phase I of a cable royalty distribution, royalties are distributed to certain categories of broadcast programming that has been retransmitted by cable systems. The categories have traditionally been syndicated programming and movies, sports, commercial and noncommercial broadcaster-owned programming, religious programming, music programming, and Canadian programming. The Office seeks comments as to the existence and extent of controversies between these categories for royalty distribution.

In Phase II of a cable royalty distribution, royalties are distributed to claimants within a program category. If a claimant anticipates a Phase II controversy, the claimant must state each program category in which he or she has an interest that has not, by the end of the comment period, been satisfied through a settlement agreement and the extent of the controversy.

The Copyright Office must be advised of the existence and extent of all Phase I and Phase II controversies by the end of the comment period. It will not consider any controversies that come to its attention after the close of that period.

2. Notice of Intention To Participate

Section 251.45(a) of the rules, 37 CFR, requires that a Notice of Intention to Participate be filed in order to participate in a CARP proceeding, but it does not prescribe the contents of the Notice. Recently, in another proceeding, the Library has been forced to address the issue of what constitutes a sufficient Notice and to whom it is applicable. *See* 65 FR 54077 (September 6, 2000); *see also* Orders in Docket No. 2000–2 CARP CD 93–97 (June 22, 2000, and August 1, 2000). These rulings will result in a future amendment to § 251.45(a) to specify the content of a properly filed Notice. In the meantime, the Office advises those parties filing Notices of Intention to Participate in this proceeding to comply with the following instructions.

Each claimant that has a dispute over the distribution of the 2000 cable royalty fees, either at Phase I or Phase II, shall file a Notice of Intention to Participate that contains the following: (1) The claimant's full name, address, telephone number, and facsimile number (if any); (2) identification of whether the Notice covers a Phase I proceeding, a Phase II proceeding, or both; and (3) a statement of the claimant's intention to fully participate in a CARP proceeding.

Claimants may, in lieu of individual Notices of Intention to Participate, submit joint Notices. In lieu of the requirement that the Notice contain the claimant's name, address, telephone number and facsimile number, a joint Notice shall provide the full name, address, telephone number, and facsimile number (if any) of the person filing the Notice and it shall contain a list identifying all the claimants that are parties to the joint Notice. In addition, if the joint Notice is filed by counsel or a representative of one or more of the claimants identified in the joint Notice, the joint Notice shall contain a statement from such counsel or representative certifying that, as of the date of submission of the joint Notice, such counsel or representative has the authority and consent of the claimants to represent them in the CARP proceeding.

Notices of Intention to Participate must be received in the Office of the Copyright General Counsel no later than 5 p.m. on September 30, 2002.

3. Motion of Phase I Claimants for Partial Distribution

A claimant who is not a party to the motion, but who files a Notice of Intention to Participate, may file a response to the motion no later than the due date set forth in this notice for comments on the existence of controversies and the Notices of Intention to Participate. The Motion of Phase I Claimants for Partial Distribution is available for inspection and copying in the Office of the General Counsel.

Dated: August 27, 2002.

David O. Carson,

General Counsel.

[FR Doc. 02–22255 Filed 8–29–02; 8:45 am]

BILLING CODE 1410–33–P

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, September 12, 2002, and Friday, September 13, 2002, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. on September, and at 9 a.m. on September 13.

Topics for discussion include: assessing payment adequacy; streamlining cost reports; monitoring beneficiaries' access to care; survey of physicians about Medicare; Medicare payment for physician services compared to private payers; competitive bidding for durable medical equipment; social HMO (SHMO) demonstration project; SNF services in Medicare+Choice; payment for new technology; 2003 hospital outpatient PPS proposed rule; and Medicare payment for prescription drugs under part B.

Agendas will be mailed on Thursday, September 5, 2002. The final agenda will be available on the Commission's Web site (*www.MedPAC.gov*).

ADDRESSES: MedPAC's address is: 601 New Jersey, NW., Suite 9000, Washington, DC 20001. The telephone number is (202) 220–3700.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 220–3700.

Lu Zawistowich,

Acting Executive Director.

[FR Doc. 02–22161 Filed 8–27–02; 8:45 am]

BILLING CODE 6820–BW–M

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Committee Management; Notice of Establishment

Authority: 5 U.S.C. Appendix 2; 20 U.S.C. 5601–5609.

AGENCY: U.S. Institute for Environmental Conflict Resolution, Morris K. Udall Foundation.

ACTION: Notice.

SUMMARY: This notice is published in accordance with section 9(a) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463). The executive director of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation has determined that the establishment of the National ECR Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed upon the U.S. Institute for Environmental Conflict Resolution (USIECR) by 20 U.S.C. 5601 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: National ECR Advisory Committee.

Purpose and Objective: The committee will provide advice to the director of the USIECR and to the Board of Trustees of the Morris K. Udall Foundation regarding future program directions, including the USIECR's role in connection with the implementation of Section 101 of the National Environmental Policy Act of 1969 (42 U.S.C. 4331).

Balanced Membership Plan: The committee will consist of a maximum of 30 members representing a balanced cross-section of viewpoints concerning environmental issues and the field of environmental conflict resolution. Among the interests represented will be environmental advocates, resource users, affected communities, state and/or local governments, tribes, federal environmental and resource management agencies, the conflict resolution and legal communities, and academic institutions.

Duration: The committee's duration will begin with the filing of the charter and continue for two years unless sooner terminated or renewed by the USIECR director.

Responsible Officials: The designated federal officer is Dr. Kirk Emerson, director of the U.S. Institute for Environmental Conflict Resolution, 110 S. Church Avenue, Suite 3350, Tucson, AZ 85701, telephone 520–670–5299.

Dated: August 26, 2002.

Ellen K. Wheeler,

Committee Management Officer.

[FR Doc. 02–22173 Filed 8–29–02; 8:45 am]

BILLING CODE 6820–FN–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

PSEG Nuclear LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–70 and DPR–75 issued to PSEG Nuclear LLC, (the licensee) for operation of the Salem Nuclear Generating Station, Unit Nos. 1 and 2 (Salem) located in Salem County, New Jersey.

The proposed amendment would change the Salem Technical Specifications (TSs) requirements for fuel decay time prior to commencing movement of irradiated fuel. TS 3/4.9.3 ''Decay Time'' would be revised to allow fuel movement in the containment to commence 100 hours after the reactor becomes subcritical between October 15th through May 15th. If refueling occurs between May 16th and October 14th, the licensee would use the existing TS requirement of 168 hours decay time prior to commencing fuel movement. If approved, the TS change would be valid through 2010. PSEG intends to re-analyze its Spent Fuel Pool (SFP) heat load conditions before this date to determine required licensing actions beyond 2010.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The proposed license amendment would allow fuel assemblies to be removed from the reactor core and be stored in the Spent Fuel Pool in less time after subcriticality than currently allowed by the TSs. Decreasing the decay time of the fuel affects the isotopic make-up of the fuel to be offloaded as well as the amount of decay heat that is present from the fuel at the time of offload. The proposed changes do not involve a significant increase in the probability of occurrence of an accident previously evaluated. The accident previously evaluated that is associated with the proposed license amendment is the fuel handling accident. Allowing the fuel to be offloaded as early as 100 hours after subcriticality does not impact the manner in which the fuel is offloaded. The accident initiator is the dropping of the fuel assembly. Since earlier offload does not effect fuel handling, there is no increase in the probability of occurrence of a fuel handling accident. The time frame in which the fuel assemblies are moved has been evaluated against the 10 CFR 50.67 dose limits for members of the public, licensee personnel and control room. Additionally, the guidance provided in Reg. Guide 1.183 was used for the selective application of Alternative Source Term [(AST)]. All dose limits are met with the reduced core offload times.

During the period from October 15th through May 15th up to and including the year 2010, a fully radiated 193 element core can be off-loaded to a Spent Fuel Pool with a 100-hour in-vessel decay, rather than a 168 hour decay, because the Spent Fuel Pool Cooling System is capable of maintaining both pools below 180°F. The continued implementation of the Spent Fuel Pool Integrated Decay Heat Management Program provides the administrative controls required to maintain SFP temperatures below the 180°F limit.

The accident previously evaluated that is associated with fuel movement is the Fuel Handling Accident. With this proposed amendment, the selected characteristics of the AST and the [Total effective dose equivalent (TEDE)] criteria become the design basis for the Fuel Handling Accident at Salem Units 1 and 2. Thus, there is no significant increase in consequences.

Therefore, the proposed license amendment does not increase the probability of occurrence or the consequences of accidents previously evaluated are not increased.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Response: No.

The proposed license amendment would allow core offload to occur in less time after subcriticality, which affects the isotopic make-up of the fuel to be offloaded as well as the amount of decay heat that is present from the fuel at the time of offload. The isotopic makeup of the fuel assemblies and the amount of decay heat produced by the fuel assemblies do not currently initiate any accident. A change in the isotopic makeup of the fuel at the time of core offload or an increase in the decay heat produced by the fuel being offloaded will not cause the initiation of any accident. The accident previously evaluated that is associated with fuel movement is the fuel handling accident. There is no change to the manner in which fuel is being handled or in the equipment used to offload or store the fuel. The effects of the additional decay heat load have been analyzed. The analysis demonstrated that the existing Spent Fuel Pool cooling system and associated systems under worst-case circumstances would maintain the integrity of the Spent Fuel Pool. The proposed method of offload does not create a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety pertinent to the proposed changes is the dose consequences resulting from a fuel handling accident. The shorter decay time prior to fuel movement has been evaluated against 10 CFR Part 50.67 and all limits continue to be met. In addition, the integrity of the Spent Fuel Pool has been demonstrated with the additional decay heat load. As stated above, the changes in isotopic makeup and additional heat load do not impact any safety settings and do not cause any safety limit to not be met. In addition, the integrity of the Spent Fuel Pool is maintained.

The time frame in which the fuel assemblies are moved has been evaluated against the 10 CFR 50.67 dose limits for members of the public, licensee personnel and control room. Additionally, the guidance provided in Reg. Guide 1.183 was used for the selective application of Alternative Source Term. Calculations performed conclude that expected dose limits following a Fuel handling Accident are met with the proposed decay time prior to commencing fuel movement.

During the period from October 15th through May 15th up to and including the year 2010, a fully radiated 193 element core can be off-loaded to a Spent Fuel Pool with a 100-hour in-vessel decay, rather than a 168 hour decay, because the Spent Fuel Pool Cooling System is capable of maintaining both pools below 180°F. The continued implementation of the Spent Fuel Pool Integrated Decay Heat Management Program provides the administrative controls required to maintain SFP temperatures below the 180°F limit.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 30, 3002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: ''In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest .

(2)The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.''

entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 28, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 26th day of August, 2002.

For the Nuclear Regulatory Commission.

Robert J. Fretz,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–22198 Filed 8–29–02; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Sunshine Act Meeting; Notification of Item Added to Meeting Agenda

DATE OF MEETING: August 5, 2002.

PREVIOUS ANNOUNCEMENT: 67 FR 49378, July 30, 2002.

ADDITION: Postal Rate Commission Opinion and Recommended Decision in Docket No. MC2002–1, Confirm.

At its meeting on August 5, 2002, the Board of Governors of the United States Postal Service voted unanimously to add this item to the agenda of its closed meeting and that no earlier announcement was possible. The General Counsel of the United States Postal Service certified that in her opinion discussion of this item could be properly closed to public observation.

CONTACT PERSON FOR MORE INFORMATION: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000.

William T. Johnstone,

Secretary.

[FR Doc. 02–22363 Filed 8–28–02; 2:15 pm]

BILLING CODE 7710–12–M

POSTAL SERVICE

Sunshine Act Meeting

TIMES AND DATES: 11:30 a.m., Thursday, September 5, 2002; 8:30 a.m., Friday, September 6, 2002.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: September 5—11:30 a.m. (Closed); September 6–8:30 a.m. (Open).

MATTERS TO BE CONSIDERED:

Thursday, September 5–11:30 a.m. (Closed)

1. Financial Reporting.

2. Strategic Planning.
3. Fiscal Year 2003 Integrated Financial Plan.
4. Office of Inspector General Fiscal Year 2003 Budget.
5. Proposed Postal Rate Commission Filings for Targeted Pricing Initiatives.
6. Personel Matters and Compensation Issues.

Friday, September 6—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, August 5–6, 2002.
2. Remarks of the Postmaster General and CEO.

Friday, September 6—8:30 a.m. (Open) [continued]

3. Postal Rate Commission Fiscal Year 2003 Budget.
4. Fiscal Year 2002 Borrowing Resolution.
5. Fiscal Year 2003 Annual Performance Plan—Government Performance and Results Act.
6. Fiscal Year 2003 Operating and Financing Plan.
7. Fiscal Year 2003 Capital Investment Plan.
8. Preliminary Fiscal Year 2004 Appropriation Request.
9. Capital Investments.
a. General Ledger System Replacement.
b. Mixed Delivery and Collection Vehicles.
c. Office of Inspector General—Office Space Additional Funding Request.
d. 76 Automated Package Processing Systems.
10. Tentative Agenda for the October 7–8, 2002, meeting in Memphis, Tennessee.

CONTACT PERSON FOR MORE INFORMATION: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,
Secretary.

[FR Doc. 02–22364 Filed 8–28–02; 2:15 pm]

BILLING CODE 7710–12–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of proposal(s):

(1) *Collection title:* Continuing Disability Report.
(2) *Form(s) submitted:* G–254, G–254a.
(3) *OMB Number:* 3220–0187.
(4) *Expiration date of current OMB clearance:* 11/30/2002.
(5) *Type of request:* Revision of a currently approved collection.
(6) *Respondents:* Individuals or households, Business or other for-profit.
(7) *Estimated annual number of respondents:* 1,500.
(8) *Total annual responses:* 3,000.
(9) *Total annual reporting hours:* 748.
(10) *Collection description:* Under the Railroad Retirement Act, a disability annuity can be reduced or not paid, depending on the amount of earnings and type of work performed. The collection obtains information about a disabled annuitant's employment and earnings.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,
Clearance Officer.

[FR Doc. 02–22287 Filed 8–29–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 31a-2, SEC File No. 270–174, OMB Control No. 3235–0179

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 31(a)(1) of the Investment Company Act of 1940 (the ''Act'') requires registered investment companies (''funds'') and certain principal underwriters, broker-dealers, investment advisers and depositors of funds to maintain and preserve records as prescribed by Commission rules.[1] Rule 31a-1 specifies the books and records each of these entities must maintain.[2] Rule 31a-2, which was adopted on April 17, 1944, specifies the time periods that entities must retain books and records required to be maintained under rule 31a-1.[3]

Rule 31a-2 requires the following:

1. Every fund must preserve permanently, and in an easily accessible place for the first two years, all books and records required under rule 31a-1(b)(1)-(4).[4]

2. Every fund must preserve for at least six years, and in an easily accessible place for the first two years: (a) all books and records required under rule 31a-1(b)(5)-(12);[5] (b) all vouchers, memoranda, correspondence, checkbooks, bank statements, canceled checks, cash reconciliations, canceled stock certificates and all schedules that support each computation of net asset value of fund shares; and (c) any advertisement, pamphlet, circular, form letter or other sales literature addressed or intended for distribution to prospective investors.

3. Every underwriter, broker or dealer that is a majority-owned subsidiary of a fund must preserve records required to be preserved by brokers and dealers under rules adopted under section 17 of the Securities Exchange Act (''section 17'') for the periods established in those rules.

4. Every depositor of any fund, and every principal underwriter of any fund other than a closed-end fund, must preserve for at least six years records

[1] 15 U.S.C. 80a-30(a)(1).
[2] 17 CFR 270.31a-1.
[3] 17 CFR 270.31a-2.
[4] 17 CFR 270.31a-1(b)(1)-(4). These include, among other records, journals detailing daily purchases and sales of securities or contracts to purchase and sell securities, general and auxiliary ledgers reflecting all asset, liability, reserve, capital, income and expense accounts, separate ledgers reflecting, separately for each portfolio security as of the trade date all ''long'' and ''short'' positions carried by the fund for its own account, and corporate charters, certificates of incorporation and by-laws.
[5] 17 CFR 270.31a-1(b)(5)-(12). These include, among other records, records of each brokerage order given in connection with purchases and sales of securities by the fund, all other portfolio purchases, records of all puts, calls, spreads, straddles or other options in which the fund has an interest, has granted, or has guaranteed, records of proof of money balances in all ledger accounts, files of all advisory material received from the investment adviser, and memoranda identifying persons, committees or groups authorizing the purchase or sale of securities for the fund.

required to be preserved by brokers and dealers under rules adopted under section 17 to the extent the records are necessary or appropriate to record the entity's transactions with the fund.

5. Every investment adviser that is a majority-owned subsidiary of a fund must preserve the records required to be maintained by investment advisers under rules adopted under section 204 of the Investment Advisers Act of 1940 (''section 204'') for the periods specified in those rules.

6. Every investment adviser that is not a majority-owned subsidiary of a fund must preserve for at least six years records required to be maintained by registered investment advisers under rules adopted under section 204 to the extent the records are necessary or appropriate to reflect the adviser's transactions with the fund.

The records required to be maintained and preserved under this part may be maintained and preserved for the required time by, or on behalf of, an investment company on (i) micrographic media, including microfilm, microfiche, or any similar medium, or (ii) electronic storage media, including any digital storage medium or system that meets the terms of this section. The investment company, or person that maintains and preserves records on its behalf, must arrange and index the records in a way that permits easy location, access, and retrieval of any particular record.[6]

The Commission periodically inspects the operations of all funds to ensure their compliance with the provisions of the Act and the rules under the Act. The Commission staff spends a significant portion of their time in these inspections reviewing the information contained in the books and records required to be kept by rule 31a-1 and to be preserved by rule 31a-2.

There are approximately 4,500 active investment companies registered with the Commission as of April 30, 2002, all of which are required to comply with rule 31a-2. Based on conversations with representatives of the fund industry, the Commission staff estimates that each fund spends about 210 hours per year complying with rule 31a-2, for a total annual burden for the fund industry of approximately 945,000 hours.[7]

The Commission staff estimates the average cost of preserving books and records required by rule 31a-2, to be approximately $.000035 per $1.00 of net assets per year.[8] With the total net assets of all funds at about $7 trillion,[9] the staff estimates that compliance with rule 31a-2 costs the fund industry approximately $245 million per year.[10] The Commission staff estimates, however, based on past conversations with representatives of the fund industry, that funds could spend as much as half of this amount ($122.4 million) to preserve the books and records that are necessary to prepare financial statements, meet various state reporting requirements, and prepare their annual federal and state income tax returns.

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, Mail Stop 0–4, 450 5th Street, NW Washington, DC 20549.

Dated: August 22, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–22157 Filed 8–29–02; 8:45 am]

BILLING CODE 8010–01–P

[6] In addition, the fund, or whoever maintains the documents for the fund must provide promptly any of the following that the Commission (by its examiners or other representatives) or the directors of the company may request: (A) a legible, true, and complete copy of the record in the medium and format in which it is stored; (B) a legible, true, and complete printout of the record; and (C) means to access, view, and print the records; and separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section. In the case of records retained on electronic storage media, the investment company, or person that maintains and preserves records on its behalf, must establish and maintain procedures: (i) to maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction; (ii) to limit access to the records to properly authorized personnel, the directors of the investment company, and the Commission (including its examiners and other representatives); and (iii) to reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

[7] Commission staff surveyed several fund representatives to determine the current burden hour estimate. The staff found that an average fund spends approximately 210 hours per annum complying with rule 31a-2 (210 hours x 4,500 registered investment companies = 945,000). Although the Commission did not change its collection of information requirements in rule 31a-2, the fund representatives' estimates reflect an annual increase of 182 hours per fund over the burden of 27.8 hours estimated in the 1998 PRA submission. The change in annual hours is based upon an increase in the estimated time each fund spends complying with the rule.

[8] The staff estimated the annual cost of preserving the required books and records by identifying the annual costs for several funds and then relating this total cost to the average net assets of these funds during the year. The staff estimates that the annual cost of preserving records is $70,000 per fund; the funds queried in support of this analysis had an average asset base of approximately $2 billion (70,000/2 billion = .000035).

[9] *See* Investment Company Institute, 2002 Mutual Fund Fact Book, at 61.

[10] This estimate is based on the annual cost per dollar of net assets of the average fund as applied to the net assets of all funds ($7 trillion x .000035 = $244.7 million).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25717; 812–12174]

Reserve Private Equity Series, et al., Notice of Application

August 26, 2002.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY: The requested order would permit certain registered open-end investment companies to use uninvested cash to invest in affiliated money market funds, and the money market funds to sell shares to, and redeem shares from, the investment companies.

APPLICANTS: Reserve Private Equity Series (the ''Equity Fund''), The Reserve Fund, Reserve Tax-Exempt Trust, Reserve New York Tax-Exempt Trust, Reserve Municipal Money Market Trust (the ''Money Market Funds,'' together with the Equity Fund, the ''Trusts''), Reserve Management Company, Inc.

(the ''Adviser''), all existing and future series of the Trusts (''Funds'') and any other registered open-end management investment company and any series thereof (included in the term ''Funds'') that are now or in the future advised by the Adviser or a person controlling, controlled by or under common control with the Adviser.

FILING DATES: The application was filed on May 16, 2000, and amended on August 20, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 18, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: 1250 Broadway, 32nd Floor, New York, NY 10001–3701.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Nadya B. Royblat, Assistant Director, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representatives

1. The Equity Fund, a Delaware business trust, is an open-end management investment company registered under the Act and is comprised of seven Funds. The Money Market Funds, each a Massachusetts business trust, are open-end management investment companies registered under the Act. The Money Market Funds are subject to the requirements of rule 2a–7 under the Act. The Adviser, a New Jersey corporation, serves as investment manager to the Funds and is registered as an investment adviser under the Investment Advisers Act of 1940.[1]

2. Applicants state that certain Funds, including Money Market Funds (the ''Participating Funds'') have, or may be expected to have, cash balances that have not been invested in portfolio securities (''Uninvested Cash'') held by their custodian bank. Uninvested Cash may result from a variety of sources, including dividends or interest received from portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of investment securities, and new monies received from investors.

3. Applicants request an order to permit the Participating Funds to use their Uninvested Cash to purchase shares of one or more Money Market Funds that comply with rule 2a–7 under the Act (the ''Central Funds''), and each Central Fund to sell shares and purchase such shares from the Participating Funds and the Adviser to effect such purchases and sales (the ''Proposed Transactions''). Applicants believe that the Proposed Transactions will benefit the Participating Funds by providing higher rates of return, ready liquidity, and increased diversification and the Central Funds by increasing their asset base and providing an additional, stable market for their shares.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides, in pertinent part, that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other acquired investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security or transactions from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants requests relief under section 12(d)(1)(J) from the limitations of sections 12(d)(1)(A) and (B) to permit the Participating Funds to invest Uninvested Cash in the Central Funds.

3. Applicants submit that the Proposed Transactions do not implicate the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because each Central Fund will maintain a highly liquid portfolio, a Participating Fund would not be in a position to gain undue influence over a Central Fund through threat of redemption. Applicants represent that the Proposed Transactions will not result in an inappropriate layering of fees because shares of the Central Fund sold to the Participating Funds will not be subject to a sales load, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the Rules of Conduct of the National Association of Securities Dealers, Inc. (''NASD'')). In connection with approving any advisory contract, a Participating Fund's board of trustees (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Disinterested Trustees''), will consider to what extent, if any, the advisory fees charged to a Participating Fund by the Adviser should be reduced to account for any changes in services provided to a Participating Fund by the Adviser as a result of the Uninvested Cash being invested in the central Funds. Applicants state that no Central Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act. Applicants further state that if a Central Fund offers more than one class of shares, each Participating Fund will invest only in the class with the lowest expense ratio at the time of the investment.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or an affiliated person of the affiliated person, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, any person 5% or

[1] All existing investment companies that currently intend to rely on the requested order are named as applicants. Any other existing or future registered open-end management investment company that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person, any person directly or indirectly controlling, controlled by, or under common control with the other person, and any investment adviser to the investment company. Applicants state that because the Funds share a common investment adviser, each of the Funds may be deemed to be under common control and affiliated persons of one another. In addition, applicants state that because a Participating Fund may acquire 5% or more of a Central Fund's outstanding voting securities, the Participating Fund and the Central Fund may be deemed to be affiliated persons of each other. As a result, section 17(a) would prohibit the sale of the shares of a central Fund to a participating Fund and the redemption of shares by the Central Fund.

5. Section 17(b) of the Act provides that the Commission may exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that the Proposed Transactions satisfy the standards of sections 17(b) and 6(c). Applicants submit that the Proposed Transactions satisfy the standards of sections 17(b) and 6(c). Applicants note that the Proposed Transactions are reasonable and fair and would not involve overreaching because shares of the Central Funds will be purchased and redeemed at net asset value. Applicants state that the participating Funds will retain their ability to invest Uninvested Cash directly in money market instruments in accordance with their investment objectives and policies. Applicants also state that each Central Fund may discontinue selling its shares to the Participating Funds if the central Fund's Board determines that the sale would adversely affect its portfolio management and operations.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that the Funds, by participating in the Proposed Transactions, and the Adviser, by managing the Proposed Transactions, could be deemed to be participants in a joint arrangement within the meaning of section 17(d) and rule 17d–1.

8. In considering whether to permit a joint transaction under rule 17d–1, the commission considers whether the investment company's participation is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants state that, for the reasons discussed above, the proposed Transactions meet the standards for an order under rule 17d–1.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The shares of the Central Funds sold to and redeemed from the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted pursuant to rule 12b–1 under the Act, or service fee as defined in rule 2830(b)(9) of the NASD Rules of Conduct.

2. Before the next meeting of the Board of a Participating Fund is held for the purpose of voting on an investment advisory contract under section 15 of the Act, the Adviser will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory agreement attributable to, managing the Uninvested Cash of the Participating Fund that can be expected to be invested in the Central Funds. Before approving any investment advisory contract under section 15, the Board of the Participating Fund, including a majority of the Disinterested Trustees, shall consider to what extent, if any, the advisory fees charged to the Participating Fund by the Adviser should be reduced to account for any change in the services provided to the Participating Fund by the Adviser as a result of Uninvested Cash being invested in the Central Funds. The minute books of the Participating Fund will record fully the Board's consideration in approving the advisory contract, including the consideration relating to fees referred to above.

3. Each of the Participating Funds will invest Uninvested Cash in, and hold shares of, the Central Funds only to the extent that the Participating Fund's aggregate investment in the Central Funds does not exceed 25% of the Participating Fund's total assets. For purposes of this limitation, each Participating Fund will be treated as a separate investment company.

4. Investment in shares of the Central Funds will be in accordance with each Participating Fund's respective investment restrictions and policies as set forth in its prospectus and statement of additional information.

5. No Central Fund shall acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

6. Each Participating Fund and Central Fund that may rely on the requested order will be advised by the Adviser or any person controlling, controlled by, or under common control with the Adviser.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–22214 Filed 8–29–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46417; File No. SR–NASD–2002–99]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to Gross Income Assessments and Personnel Assessments

August 23, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. On August 21, 2002, the NASD amended the proposal.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.[3]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend Schedule A of the NASD By-Laws to adjust its Member Regulation (including Enforcement) pricing structures to: (1) Implement a three-tiered flat rate for the Gross Income Assessment (''GIA'') that would be applied to gross FOCUS revenue and would eliminate current deductions and exclusions; and (2) use the Personnel Assessment as a more prominent assessable base to fund Member Regulation activities.

Under the current structure, three types of fees and assessments are used to fund the NASD's member regulatory activities: Regulatory Fee,[4] Personnel Assessment, and GIA.[5] The proposed restructuring is comprised of four important amendments: (1) Eliminate the Regulatory Fee; (2) institute a new transaction-based Trading Activity Fee similar to the SEC Section 31 Fee; (3) increase the rates assessed to member firms under the Personnel Assessment; and (4) implement a simplified three-tiered flat rate for the GIA and eliminate current deductions and exclusions.[6] This proposed rule change is a part of a package of two separate yet related rule filings[7] filed with the Commission as a result of a review of the overall NASD pricing structure[8] and is intended to address the last two amendments to the NASD pricing restructuring by increasing the rates assessed to member firms under the Personnel Assessment and implementing a simplified three-tiered flat rate for the GIA and eliminating current deductions and exclusions.

These fees assessed upon and paid by member firms are used by the NASD to fund the NASD's member regulatory activities, including the supervision and regulation of members through examinations, processing of membership applications, financial monitoring, policy, rulemaking, interpretive, and enforcement activities. These amendments to this pricing structure are intended to serve the following purposes: (1) Simplify the NASD's fee structure; (2) ensure fairness in the NASD's fee structure by assessing higher fees to those member firms that require more NASD regulatory services; (3) assess a transaction-based fee in a manner that, unlike the Regulatory Fee, does not influence where members choose to execute trades; (4) reduce the cyclical nature of the current NASD fee structure; and (5) eliminate the NASD's reliance on funds generated from the Regulatory Fee on transactions executed through Nasdaq.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Schedule A to [the] NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of [the] NASD shall be determined on the following basis.

Section [2] *1*—Member Regulation Fees

(a) through (b) No Change.

[Section 1—Assessments]

(c) Each member shall pay an annual *Gross Income Assessment* [composed of:] *equal to the greater of $1,200.00 or the total of:*

[(a) An amount equal to the greater of $1,200.00 or the total of:]

(1) [(i)] 0.125% of annual gross revenue [from state and municipal securities transactions] *less than or equal to $100,000,000.00;*

(2) [(ii) 0.125%] 0.029% of annual gross revenue [from other over-the-counter securities transactions,] *greater than $100,000,000.00 up to $1,000,000,000.00; and*

(3) [(iii) 0.125%] *0.014%* of annual gross revenue [from U.S. Government securities transactions, and] *greater than $1,000,000,000.00.*

[(iv) with respect to members whose books, records and financial operations are examined by the NASD, 0.125% of annual gross revenue from securities transactions executed on an exchange.]

Each member is to report annual gross revenue as defined in Section [7] *2* of this Schedule, for the preceding calendar year.

(d) Each member shall pay an annual Personnel Assessment equal to:

(1) $75.00 per principal and each representative up to five principals and representatives as defined below;

(2) $70.00 per principal and each representative for six principals and representatives up to twenty-five principals and representatives as defined below; or

(3) $65.00 per principal and each representative for twenty-six or more principals and representatives as defined below.

[(b) An amount equal to $10.00 for each principal and each] *A principal or representative is defined as a principal or* representative in the member's organization who is registered with [Association] *NASD* as of December 31st of the [current] *prior* fiscal year [of the Association, or in the case of a new applicant for membership, for each principal and representative who is registered when the applicant's membership first becomes effective].

[(c) Members shall receive a credit against the annual assessment on gross income stated in paragraph (a) above as follows:

(1) Portion of assessment > $5,000—21%

(2) Portion of assessment > $25,000—3% additional

(3) Portion of assessment > $50,000—5% additional

(4) Portion of assessment > $100,000—3% additional]

Section [7] *2*—Gross Revenue for Assessment Purposes

[(a)] Gross revenue is defined for assessment purposes as total income as reported on FOCUS form Part II or IIA. [with the following exclusions:]

[(1) Other income unrelated to the securities business;]

[(2) Commodities income;]

[(3) Advisory fees, investment management fees and finders' fees not directly involving the offering of securities; proxy fees; vault service fees; safekeeping fees; transfer fees; and fees for financial advisory services for municipalities:]

[(4) Commissions derived from transactions executed on a registered national securities exchange or a foreign securities exchange (Note 1);]

[(5) Profits or losses derived from transactions of which both the purchase and sale are executed on a registered national securities exchange, including arbitrage (Note 1): and]

[(6) Profits and losses derived from transactions in certifications of deposit

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[3] *See* August 21, 2002 letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, and attachments (''Amendment No. 1''). In Amendment No. 1, the NASD provided new proposed rule language that completely replaces and supersedes the original proposed rule language, and made minor technical amendments to the proposed rule change.

[4] The Regulatory Fee is described in Section 8(a) of Schedule A to the NASD By-Laws.

[5] The Personnel Assessment and GIA are described in Section 1 of Schedule A to the NADS By-Laws.

[6] The changes resulting from the proposed restructuring would be revenue neutral.

[7] The other proposed rule change, which was effective on filing with the Commission, eliminated the Regulatory Fee and implemented a Trading Activity Fee, and adjusted the placement of the SEC Section 31 Transaction Fee in Schedule A. *See* Securities Exchange Act Release No. 46416 (August 23, 2002) (SR–NASD–2002–98).

[8] The NASD, in its pricing restructuring review, proposed changes to the Regulatory Fee in *Special Notice to Members 02–09* and requested comments. The NASD received a number of comments. In response to those comments, the proposal set forth in *Special Notice to Members 02–09* is not being pursued. This proposed rule change replaces the changes previously proposed.

and commercial paper, which is defined to include drafts, bills of exchange, and bankers acceptances.]

[(b) In addition, members may deduct:]

[(1) Any commissions, concessions or other allowances paid to another member in connection with the execution or clearance of transactions included in reported revenue. For example, a member acting as a clearing agent for another member shall deduct net amounts allowed to the non-clearing member; and]

[(2) 25% of gross wrap fees charged to and received from customers and paid or allocated to investment managers or advisors.]

[(3) Interest and dividend expense but not in excess of related interest and dividend revenue or, alternatively, the member may deduct 40% of interest earned by the member on customer securities accounts; provided, however in addition, the member may deduct the first $50,000 of net interest and dividend revenue.]

[Note 1: Income not subject to exclusion for members for whom the NASD is the designated examining authority.]

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Section [8] 7—Fees for Filing Documents Pursuant to the Corporate Financing Rule

No Change to rule language.

Section [9] *8*—Service Charge for Processing Extension of Time Requests

No Change to rule language.

Section [10] *9*—Subscription Charges for Firm Access Query System (FAQS)

No Change to rule language.

Section [11] *10*—Request for Data and Publications

No Change to rule language.

Section [12] *11*—Reserved

No Change to rule language.

Section [13] *12*—Application and Annual Fees for Member Firms with Statutorily Disqualified Individuals

No Change to rule language.

Section [14] *13*—Review Charge for Advertisement, Sales Literature, and Other Such Material Filed or Submitted

No Change to rule language.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Association has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Regulatory Fee, Personnel Assessment, and GIA currently are used to fund the NASD's member regulatory activities, including the supervision and regulation of members through examinations, processing of membership applications, financial monitoring, policy, rulemaking, interpretive, and enforcement activities. The proposed changes are revenue neutral and strive to better align the NASD's member regulatory fees with its functions, efforts and costs.

The amendments to this pricing structure are intended to serve the following purposes: (1) Simplify the NASD's fee structure; (2) ensure fairness in the NASD's fee structure by assessing higher fees to those member firms that drive regulatory costs; (3) assess a transaction-based fee in a manner that, unlike the existing Regulatory Fee, does not influence where members choose to execute trades; (4) reduce the cyclical nature of the current NASD fee structure; and (5) eliminate the NASD's reliance on funds generated from the Regulatory fee on transactions executed through Nasdaq.

The NASD's membership population varies greatly with regard to factors that drive the cost of required regulation. Historically, member regulatory fees were derived primarily from industry revenues and Nasdaq transactions, while the NASD derived minimal fees from the registration of member firm personnel. Analysis revealed that the number of registered persons serves as an effective proxy in determining the frequency of certain types of regulatory efforts, and therefore regulatory costs. Therefore, as before, the three critical factors used to measure regulatory cost for NASD member firms are overall size of the member firm, level of trading activity and number of registered representatives. However, the weight from each, as well as the benchmark used to measure industry revenues and transactions, has been shifted under the proposed amendments to better link the fees assessed under these factors with the NASD's costs.

Gross Income Assessment (GIA)

The current GIA is assessed on a member firm's gross FOCUS revenues less various exclusions and deductions. The allowable exclusions and deductions have grown to the point where they totaled over 60% of gross FOCUS revenues in 2001. Member firms are assessed 0.125% on the net assessable FOCUS revenue that converts into a .0355% effective rate on gross FOCUS revenues. Member firms having gross FOCUS revenues less than or equal to $960,000 are assessed at a flat rate of $1,200.

Under the current fee structure for the GIA, the amount of revenue received by the NASD is subject to unpredictable swings due to deductions and exclusions taken by member firms. The exclusions and deductions include interest expense, investment management fees, exchange revenue, and unrelated revenues. In 2001, gross FOCUS revenue increased by 30%, yet the total assessment only increased by 15% due to a disproportionate increase in exclusions and deductions, primarily in interest expense. The proposed amendments to the pricing structure are intended to improve the standardization, consistency and uniformity in which the GIA is assessed on and paid by member firms.

The proposed solution is similar to that employed by the New York Stock Exchange. The rate would be applied to the gross FOCUS revenue with deductions and exclusions eliminated. Given the diversity and size of NASD member firms, the NASD proposes the following three-tiered rate structure:

Revised Rate Structure:	
Gross FOCUS Revenue < or = to $960 Thousand	
Assessed Flat Fee of	$1,200
Gross FOCUS Revenue > $960 Thousand	
Tiered Rate on Gross FOCUS Revenue:	
Over $1 Billion	0.014%
> $100 Million to $1 Billion	0.029%
< or = to $100 Million	0.125%
Effective Rates at FOCUS Revenue Category Levels:	
$10 Billion	0.017%
$1 Billion	0.039%
$250 Million	0.067%
$100 Million	0.125%

Small member firms with gross FOCUS revenues less than or equal to $960,000 would continue to be assessed a flat fee of $1,200. As outlined above, all other member firms will be assessed a tiered rate based on their gross FOCUS

revenues. The higher the gross FOCUS revenue, the lower the effective rate.

This type of rate structure will allow for greater equity among member firms because each member firm will be assessed on the same revenue base. Additionally, the new rate structure will simplify the process because member firms will report only gross FOCUS revenue as currently done on FOCUS Form Part II or IIA and will no longer need to report deductions and exclusions.

Personnel Assessment

The current Personnel Assessment is a minimal fee of $10 per registered representative that generates only 4% of total member regulatory fees and inadequately supports the NASD's member regulatory costs. The number of registered representatives per firm is a fair and representative measure of the cost of member regulatory activities, yet has not been used as a greater basis for the assessment of fees. Additionally, based on the current fee structure, some firms with a disproportionately large number of registered representatives yet lower FOCUS revenues are avoiding the payment of the cost of regulating member firms through the payment of NASD fees.

As part of this proposal, the Personnel Assessment will become a more prominent assessable base for the funding of member regulatory activities. Given the vast size differential of our member firms, the NASD proposes the following three-tiered rate structure:

Revised Rate Structure:

Tiered-rate on registered reps:	
> 25 registered reps	$65.00
6 to 25 registered reps	$70.00
1 to 5 registered reps	$75.00

Phase-In

The NASD's overall proposal will be revenue neutral to the NASD. However, due to the link of revenues to regulatory services provided, there will be effects, both negative and positive, on individual member firms. To minimize the impact on member firms, the restructuring of fees will be phased in over a three-year period. Specifically, for the GIA, any negative or positive variances experienced by firms will be phased in at a rate of 33% in Year 1, 67% in Year 2 and 100% in Year 3. Also, the Personnel Assessment, which will be increased to cover the reduction in the Trading Activity Fee, will be phased-in at a rate of 33% in Year 1, 67% in Year 2 and 100% in Year 3. Based upon a review of the majority of the NASD's small member firms, the net increase of fees will average approximately $100 in Year 1.

Additionally, the NASD will continue to reduce these fees through rebates to the member firms in connection with the proceeds raised from the sale of Nasdaq. The NASD will continue to use a portion of these rebates to eventually reduce the minimum GIA amount from $1,200 to $600. The remaining balance and any additional discretionary rebates will be used to further reduce any negative impact experienced by the member firms as a result of this proposal.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[9] which requires, among other things, that the NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Moreover, the NASD believes the level of the fee is reasonable because it relates to the recovery of the costs of supervising and regulating members. The NASD believes that the majority of the small member firms would not be impacted by the change in the GIA's structure since over half of the NASD member firm population has gross FOCUS revenues of less than $960,000.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received on the current proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–99 and should be submitted by September 20, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–22215 Filed 8–29–02; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78o–3(b)(5).

[10] The NASD will implement the new fees on January 1, 2003, provided the Commission approves this proposed rule change.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46410; File No. SR–NASD–2002–56]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 to the Proposed Rule Change Establishing a Uniform Process for Opening Daily Trading for the Nasdaq SuperMontage

August 23, 2002.

I. Introduction

On April 22, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a uniform process for opening daily trading in Nasdaq's future Order Display and Collector Facility (''SuperMontage''). On May 17, 2002, the NASD, through Nasdaq, filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on May 24, 2002.[4] The Commission received thirteen comment letters from twelve commenters regarding the proposal.[5] Nasdaq responded to the issues raised in the comment letter on July 12, 2002.[6] On July 12, 2002, the NASD, through Nasdaq, filed Amendment No. 2 to the proposed rule change.[7] On August 22, 2002, the NASD, through Nasdaq, filed Amendment No. 3 to the proposed rule change.[8] This order approves the proposed rule change and Amendment No. 1, and notices and grants accelerated approval to Amendment Nos. 2 and 3.

II. Description of the Proposed Rule Change

Nasdaq proposes to amend the operation of SuperMontage during pre-market hours. Specifically, Nasdaq proposes to: (1) Permit the entry of market orders prior to 9:30 a.m. Eastern Time, (2) amend the timeframe for the Trade-or-Move Rule to conform to the changes in the opening process, and (3) modify the opening process by providing for the automatic clearing of locked/crossed quotes between 9:29:30 a.m. and 9:29:59 a.m. Eastern Time.

A. Expansion of Order Entry During Pre-Market Hours

Nasdaq proposes to permit the entry of market orders prior to the 9:30 a.m. market open in SuperMontage. Under current SuperMontage rules, market participants may enter limit orders prior to the market open at 9:30 a.m. Eastern Time, but not market orders.[9] Under the proposal, market participants would be permitted to enter market orders prior to the market open. Market orders and limit orders designated as IOC would not be eligible for execution prior to the market open, and instead would be held in a separate queue until 9:30 a.m., at which time such orders, if marketable, would be executed (in whole or in part) through the SuperMontage Non-Directed Order Process, or, if non-marketable, cancelled and returned (in whole or in part) to the entering firm.[10]

B. Modifications to ''Trade-or-Move'' Rule Timeframes

Nasdaq proposes to amend its Trade-or-Move Rule to require market makers and Electronic Communication Networks (''ECNs'') (collectively ''Nasdaq Quoting Market Participants'') to send Trade-or-Move Directed Orders[11] between 9:20 a.m. and 9:29:29 a.m. (as opposed to 9:29:59 a.m.), in order to permit the pre-market unlocking/uncrossing process to occur from 9:29:30 a.m. to 9:29:59 a.m. Thus, Nasdaq Quoting Market Participants will continue to have an obligation to send Trade-or-Move Directed Orders from 9:20:00 a.m. and 9:29:29 a.m. to all attributable quotes/orders that it may actively lock or cross, even if the Nasdaq Quoting Market Participant is sending its actively locking/crossing quote as a non-attributable quote/order (*i.e.*, SIZE). However, Nasdaq Quoting Market Participants entering a quote/order that would actively lock or cross a quote/order displayed in SIZE would not be obligated to send a Trade-or-Move Directed Order.[12]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original Rule 19b–4 filing in its entirety.

[4] *See* Securities Exchange Act Release No. 45965 (May 20, 2002), 67 FR 36659.

[5] *See* letters to Jonathan G. Katz, Secretary, Commission, from Howard Bernstein, Vice President, Compliance Department, Robertson Stephens, Inc. (''RSSF''), dated June 13, 2002 (''RSSF Letter); Seth Weber, on behalf of Matthew Johnson, Managing Director, Lehman Brothers, Inc., dated June 14, 2002 (''Lehman Brothers Letter''); Keith A. Gertsen, Managing Director, Head, Nasdaq Trading, Deutsche Banc Alex. Brown, Inc. on behalf of Deutsche Bank Securities, Inc., dated June 14, 2002 (''Deutsche Bank Letter''); C. Thomas Richardson, Head, Nasdaq Trading, Salomon Smith Barney, Inc. (''SSB''), dated June 14, 2002 (''SSB Letter''); Michael T. Dorsey, Senior Vice President, General Counsel and Secretary, Knight Trading Group, Inc. (''Knight''), dated June 14, 2002 (''Knight Letter''); Michael A. Bird, Chairman, and John C. Giesea, President and CEO, Security Traders Association (''STA''), dated June 17, 2002 (''STA Letter''); Bruce Turner, CIBC World Markets, dated June 6, 2002 (''CIBC Letter''); Scott W. Anderson, Associate Director, Region Americas Legal, UBS Warburg LLC (''UBSW''), dated June 17, 2002 (''UBSW Letter''); Hedi H. Reynolds, Managing Director, Nasdaq Trading, Morgan Keegan & Company, Inc., dated June 14, 2002 (''Morgan Keegan Letter''); C.E. Wasson, SVP Director Nasdaq Trading, Legg Mason Wood Walker, Inc. (''Legg Mason''), dated June 20, 2002 (''Legg Mason Letter''); Howard Bernstein, Vice President, Compliance Department, RSSF, dated June 17, 2002 (''RSSF Addendum Letter''); Elliot Levine, Assistant General Counsel, Executive Director, CIBC, dated June 18, 2002 (''CIBC II Letter''); and John P. Hughes, Senior Vice President, Director of Nasdaq & Listed Trading, Janney Montgomery Scott LLC, dated June 12, 2002 (''Janney Montgomery Scott Letter'').

[6] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 1, 2002 (''Response to Comments'').

[7] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Sapna C. Patel, Attorney, Division, Commission, dated July 12, 2002 (''Amendment No. 2''). In Amendment No. 2, Nasdaq made a technical correction to its proposed rule text by replacing ''MPID'' with ''MMID'' in proposed NASD Rule 4613.

[8] *See* letter from Jeffrey S. Davis, Office of General Counsel, Nasdaq, to Sapna C. Patel, Attorney, Division, Commission, dated August 22, 2002 (''Amendment No. 3''). In Amendment No. 3, Nasdaq provided the following: (1) an updated version of its proposed rule language reflecting changes to its rules that have occurred since the initial filing of this proposal; (2) a representation that it will evaluate whether the thirty-second pre-opening unlocking/uncrossing process time period should be shortened in the 60 days following the complete roll-out of SuperMontage, and will report its findings to the Commission within 30 days thereafter; (3) a representation that it will monitor market participants' inability to send Trade-or-Move Directed Orders to SIZE during the Trade-or-Move process, and will file a proposed rule change with the Commission within 90 days of the complete roll-out of SuperMontage to resolve problems to Size accessability; and (4) clarification that all quotes residing in SuperMontage at the end of the trading day will be carried over to the next trading day, and that the quoting market participant could update that quote prior to the 9:20 a.m. Trade-or-Move process.

[9] Order-entry firms may enter limit (priced) orders before 9:30 a.m. Eastern Time, but these orders must be designated as Immediate or Cancel (''IOC''). Market Makers, ECNs, and UTP Exchanges may enter limit orders, but are not required to designate them as IOC orders.

[10] Prior to 9:29:30 a.m., the Directed Order Process would be the exclusive execution process in SuperMontage. Between 9:29:30 a.m. and 9:29:59 a.m. execution could occur in the Non-Directed Order Process solely to eliminate existing locked or cross markets prior to the 9:30 a.m Nasdaq opening.

[11] Nasdaq proposes to change the term ''Trade-or-Move Message'' to ''Trade-or-Move Directed Order.'' *See* proposed NASD Rule 4613(e)(1)(C).

[12] Presently, SuperMontage is not programmed with the functionality that would enable a Trade-or-Move Directed Order to access SIZE during the Nasdaq pre-market.

C. SuperMontage Pre-Open Clearing of Locking and Crossing Quotes and Orders

Nasdaq also proposes to begin an automated process to clear locked and crossed markets in SuperMontage between 9:29:30 a.m. and 9:29:59 p.m. Eastern Time. Under the proposal, the system will pair off the most aggressively priced buy quote/order against the most aggressively priced sell quote/orders. Once this ''best-priced pair'' is determined, the system will execute the two identified orders at the price of the newer order until the older order is fully satisfied. If the displayed size becomes exhausted at that price level, SuperMontage will continue to execute against available reserve size at that price level. This process will be repeated until an unlocked and uncrossed market results.

After the initial locks/crosses are cleared, any additional locking or crossing quotes/orders entered between 9:29:30 a.m. and 9:29:59 a.m. would be cleared consistent with the SuperMontage process for clearing locks and crosses applicable during regular market hours.[13] Such executions would occur at the price of the quote/order to be locked/crossed consistent with the locking/crossing process. All quotes/orders residing in SuperMontage, except market orders and orders designated as IOC,[14] including SIZE, would participate in the pre-market clearing of locks and crosses subject to the execution logic described above. All trades executed prior to the 9:30 a.m. market open, including trades that participate in the pre-market lock/cross clearing process, would be designated as ''.T'' to reflect that they were executed outside of normal market hours.

[13] If at any time a market participant enters a quote that would lock/cross the market in the SuperMontage, the Nasdaq system will send the market participant a warning message. If the market participant chooses to override the warning message, the quote will participate in the unlocking/uncrossing process pursuant to NASD Rule 4710(b)(3).

[14] According to Nasdaq, if a market maker or ECN receives an order during the pre-market and its customer does not wish the order to be executed prior to 9:30 a.m., the market participant can enter the order into SuperMontage prior to the open as either a market order or a limit order with an IOC designation. These orders would not drive a quote, would not participate in the pre-market lock/cross clearing process, and would be held in a separate queue until 9:30 a.m., at which time such orders would become eligible for execution (or canceled if not marketable).

Alternatively, if the customer limit order would otherwise be eligible for execution during the pre-market unlocking/uncrossing process, the market participant could hold the orders until 9:30 a.m., to abide by the customer instructions not to effectuate an execution prior to the market open.

III. Summary of Comments

The Commission received thirteen comment letters from twelve commenters regarding the proposed rule change.[15] Ten of the commenters supported the proposed rule change.[16] These commenters generally agreed that the proposal would provide a more uniform and orderly opening process for the market and improve the accuracy and stability of pricing in the market. One commenter believed that the benefits promised through the proposed technological changes, alone, were sufficient to warrant an expeditious implementation of SuperMontage and that they were remarkable and long overdue developments for the Nasdaq market.[17] One commenter believed that the proposal would protect customers from having their orders executed at prices substantially away from the subsequent unlocked/uncrossed market by enabling them to see an accurate and reasonable opening price.[18] Another commenter noted that currently the unlocking/uncrossing process occurs after the 9:30 a.m. market open, which results in highs/lows being set at prices unrelated to prices established during the remainder of the trading day.[19] This commenter believed that the proposal would address this issue by beginning the unlocking/uncrossing process before the market open. Finally, several commenters supported the new matching algorithm. Specifically, one commenter believed that the matching algorithm that executed paired orders at the price of the newer order made sense because it required a firm that aggressively locks/crosses the market near the open to be good for its quoted price and size.[20] Another commenter believed that the pairing of quotes/orders at the most aggressive price and executing these paired orders at the price of the newer quote/order was more rational because the execution would occur at a price which should be more indicative of where the stock would open.[21]

Two commenters, while generally supporting the intent of the proposal, raised concerns about the proposal.[22] Specifically, one commenter raised concerns about the use and interaction of SIZE in the pre-market.[23] The commenter stated that because SIZE is ''currently unable to relay Trade-or-Move Directed Orders to market participants with pre-opening non-attributable orders posted in SIZE, market participants entering a quote/order that locks or crosses SIZE will be relieved of any obligation to send a Trade-or-Move Directed Order to SIZE.''[24] This commenter believed that this component of the proposal could hinder the price discovery process because market participants entering non-attributable quotes/orders would be limited in their capacity to participate in the Trade-or-Move Directed Order process. In addition, the commenter believed that requiring a market participant to send a Trade-or-Move Directed Order to parties it would lock/cross by posting a quote/order in SIZE was contrary to the stated purpose of the SIZE facility, which according to the commenter, was to allow market participants to anonymously post trading interest. Finally, the commenter opined that the inability to access SIZE with Trade-or-Move Directed Orders during the pre-opening might also impede the price discovery process. Subsequently, this commenter sent an addendum to its original letter to express its full support for Nasdaq's goal to eliminate locked or crossed markets at the open, and indicated that it was satisfied that Nasdaq was seeking to resolve the SIZE accessibility issue within a reasonable time after the implementation of SuperMontage.[25] Accordingly, the commenter believed that the proposal should be approved.

Another commenter raised concerns regarding the use of SIZE during the pre-market.[26] Specifically, this commenter believed that because quotes placed in SIZE would not interact with other market participant's quotes/order in the pre-market until the unlocking/uncrossing process began at 9:29:30 a.m. For example, the commenter noted that a market participant could enter a large size quote in SIZE at 9:20 a.m. and cancel the quote just before 9:29:30 a.m., which would leave ''all potential buyers and sellers with an incorrect assumption as to the potential price of a stock at 9:29:30 a.m. and the open.'' The commenter believed that the proposal would permit market participants to enter quotes/orders in SIZE while other market participants

[15] *See supra* note 5.

[16] *See* Lehman Brothers Letter, Deutsche Bank Letter, SSB Letter, STA Letter, CIBC Letter, USBW Letter, Morgan Keegan Letter, Legg Mason Letter, CIBC II Letter, and Janney Montgomery Scott Letter.

[17] *See* USBW Letter.

[18] *See* STA Letter. *See also* Legg Mason Letter.

[19] *See* CIBC Letter. *See also* Lehman Brothers Letter.

[20] *See* CIBC Letter.

[21] *See* Deutsche Bank Letter. *See also* SSB Letter, which noted that the new opening process would reward the most aggressively priced order and that the price improvement would go to the older order.

[22] *See* RSSF Letter and Knight Letter.

[23] *See* RSSF Letter.

[24] *See* RSSF Letter.

[25] *See* RSSF Addendum Letter.

[26] *See* Knight Letter.

would be able to determine whether the market participant in SIZE was truly interested in trading at that price. As a solution, the commenter suggested that Nasdaq either: (1) Limit the use of SIZE until after the open to ensure that pre-open quotes are ''live,'' or (2) revise the rule to allow market participants to interact with quotes in SIZE during the 9:20:00 a.m. to 9:30:00 a.m. time frame. This commenter also objected to the length of time Nasdaq proposed for the pre-opening process. Specifically, the commenter believed that 30 seconds was too long and believed that technology was such that ten or five seconds was more appropriate.

In response to these commenters concerns, Nasdaq submitted a letter to the Commission.[27] In the Response to Comments regarding the pre-market accessibility of SIZE, Nasdaq stated that it believed the ''scope of harm'' is ''speculative'' but that it would monitor and carefully study the Trade-or-Move process in the SuperMontage environment.[28] Specifically, Nasdaq noted that market participants that wish to enter a locking/crossing quote/order in SIZE have an obligation to resolve the lock/cross by sending a Trade-or-Move Directed Order. Further, Nasdaq noted that the ''only time interest in SIZE would not be immediately accessible is if a party wanted to lock/cross an existing SIZE quote that was entered prior to 9:20 a.m.,'' and that this would be resolved at 9:29:30 a.m. According to Nasdaq, the primary purpose of the Trade-or-Move process is to resolve locked or crossed markets created prior to the open and Nasdaq believes that the proposal accomplishes this goal. However, Nasdaq committed to study the Trade-or-Move process during the phase-in of SuperMontage to determine whether it needs to be augmented, modified or eliminated.

With regard to the gaming concerns, Nasdaq stated that while it was unwilling to prohibit the use of SIZE in the pre-market, it would take all concerns about potential manipulative activity seriously and that it would carefully monitor the use of SIZE in the pre-market. In addition, Nasdaq noted that it had posted a document on its website stating that it is ''antithetical to NASD rules for a market maker, ECN, and the customers of market makers and ECNs to enter orders into SIZE and then cancel them prior to the 9:29:30 opening process,'' and that it will refer any such violations to NASD for ''investigation and disciplinary action.''[29] Nasdaq also noted that its MarketWatch staff would monitor pre-market locks/crosses, including those created by SIZE.

Nasdaq also represented that it is ''analyzing potential technological changes to resolve any concerns regarding the accessibility of SIZE in the pre-market.''[30] For example, Nasdaq stated that in addition to its initial concept of passing Directed Orders through SIZE to the ultimate entering party, it is also considering ''moving the pre-market Trade-or-Move process to the non-directed order platform and deeming quotations placed in the system in the pre-market immediately executable to inhibiting the display of SIZE in the pre-market.''

With regard to the time period of the pre-opening process, Nasdaq responded that it had ''contemplated that the unlocking and uncrossing process will take far less than 30 seconds to complete.''[31] Nasdaq reasoned that, because the system would continue to process and execute any incoming quotes/orders that would lock or cross the market during the remainder of the 30-second period, the system as proposed would ''provide powerful disincentives to inappropriate quotation or order-entry activity'' after the initial pre-market clearing of locks and crosses but before the official market opening which should in turn promote price discovery.[32]

IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[33] The Commission finds that the proposal, as amended, is consistent with provisions of Section 15A of the Act,[34] in general and with Section 15A(b)(6) of the Act,[35] in particular, in that the proposal is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in processing information with respect to and facilitating transactions in securities, as well as removing impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Commission finds that Nasdaq's proposal is designed to eliminate pre-opening locked and crossed markets, which should help to provide more informative quotation information, facilitate price discovery, and contribute to the maintenance of a fair and orderly market. The Commission believes that the proposal should establish a more orderly market opening and is therefore consistent with the Act.

The Commission finds that Nasdaq's proposal to permit the entry of market orders prior to the 9:30 a.m. market opening is consistent with the Act. As originally approved, market orders could not be entered prior to the 9:30 a.m. market open in SuperMontage. Under the proposal, market participants could enter market orders, as well as limit orders, prior to the market open. The Commission believes that the entry of market orders prior to the SuperMontage opening should assist market makers, ECN, and order entry firms, in the management of their quotes and orders. In particular, this could produce efficiencies for market participants as they prepare for the market open. The Commission notes the proposal does not change the time that market orders are eligible for execution because like today, market orders will only be executed during regular market hours (*i.e.*, 9:30 a.m. to 4 p.m.), thus the only change with regard to the handling of market orders would be the time that they are eligible for entry into the system. Further, because market orders entered prior to the open would be held in a separate queue, and not eligible for execution until the market opening, market orders would not be subject to the volatility and lack of liquidity that may prevail during pre-market trading. In addition, since market orders entered before the open would only become eligible for executions at the open after the pre-market clearing of locks and crosses, such orders should receive executions that are based on more accurate and stable market conditions.

The Commission finds that Nasdaq's proposal to amend the timeframe for the Trade-or-Move Process is consistent with the Act. Under the proposal, Nasdaq Quoting Market Participants that are actively locking or crossing an attributable quote/order would be required to send Trade-or-Move Directed Orders between 9:20 a.m. and 9:29:29 a.m. (as opposed to 9:29:59 a.m.), in order to permit the pre-market unlocking/uncrossing process to occur from 9:29:30 a.m. to 9:29:59 a.m. This aspect of the proposal does not effect the operation of Nasdaq's pre-market

[27] *See* Response to Comments, *supra* note 6.

[28] *See* Response to Comments. Nasdaq also stated that it currently believes that ''attempts to use SIZE to create a locked/crossed market will be limited,'' based on its ongoing SuperMontage user acceptance testing.

[29] *See* Response to Comments.

[30] *See* Response to Comments.

[31] *See* Response to Comments.

[32] *See* Response to Comments.

[33] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78o–3.

[35] 15 U.S.C. 78o–3(b)(6).

Trade-or-Move process in a substantive manner. Thus, the Commission finds that reducing the Trade-or-Move timeframe by 30 seconds does not raise any new regulatory issues, and that the Nasdaq Trade-or-Move rule is still designed to reduce the frequency of pre-opening locked and crossed markets, which should help to provide more informative quotation information, facilitate price discovery, and contribute to the maintenance of a fair and orderly market.

Under the proposal, however, market participants entering a quote/order that would actively lock or cross unattributed quotes/orders in SIZE would not be obligated to send a Trade-or-Move Directed Order. Nasdaq explained that there is an exception to the Trade-or-Move Directed Order obligation for quotes/orders in SIZE because there is no means in the SuperMontage to identify the market participant (or participants) that have their trading interest represented in SIZE via a Trade-or-Move Directed Order. As noted above, two commenters expressed a concern that the quotes/orders in SIZE would be excepted from the Trade-or-Move Directed Order requirement.[36] In particular, the commenters expressed a concern that the potential for gaming the system may exist wherein a party could place a large share amount into SIZE and thereafter remove it immediately before Nasdaq's proposed automated unlocking/uncrossing process commences at 9:29:30 Eastern Time. In response, Nasdaq stated that it will make clear to Nasdaq Quoting Market Participants that it would be antithetical to the NASD Rules to enter orders into SIZE and then cancel those orders immediately prior to the 9:29:30 a.m. pre-market opening process. Further, Nasdaq committed to monitor pre-market locks/crosses, including those created by SIZE, and, where appropriate, to either contact the parties that are creating those locks/crosses or refer the activity to the NASD for investigation and disciplinary action. Nasdaq indicated that it was seeking a technological solution to the SIZE accessibility problem, and that such a solution should be ready for the Commission's review during the fall of this year. Finally, Nasdaq committed to work with the Commission to propose and adopt appropriate rule-based restrictions on using SIZE in the pre-market if remediation is necessary during the SuperMontage roll-out and prior to the implementation of a final technology solution. The Commission believes that Nasdaq has adequately addressed the concerns of the commenters and that the appropriate regulatory and surveillance mechanisms are in place to protect the public interest and investors. The Commission expects Nasdaq to surveil the pre-market to ensure that manipulative activity does not occur, especially with the use of SIZE. Further, if Nasdaq observes abusive use of SIZE, the Commission expects that Nasdaq would address such activity expeditiously.

The Commission finds that Nasdaq's proposal to establish an automated procedure for clearing locking and crossing quotes in the system prior to the market open is consistent with the Act. Under the proposal, any locked or crossed markets in SuperMontage during the pre-market opening would be cleared between 9:29:30 a.m. and 9:29:59 a.m. Eastern Time by pairing off the most aggressively priced buy quote/order against the most aggressively priced sell quote/orders. Once the ''best-priced pair'' is identified and executed at the price of the newer, better priced quote/order, the process would be repeated until an unlocked and uncrossed market results. The Commission finds that Nasdaq's provision to address locked and crossed markets is consistent with the Act because it is designed to eliminate locked and crossed markets prior to the market opening, which should in turn help to facilitate more efficient openings. Further, the Commission believes that the Nasdaq's proposal to eliminate locked and crossed markets between 9:29:30 a.m. and 9:29:59 a.m. should help to provide reliable quotation information, facilitate price discovery, and contribute to the maintenance of a fair and orderly market. As the Commission has concluded previously, continued locking and crossing of the market can negatively impact market quality.[37] By clearing locked and crossed markets prior to the market opening, the Commission believes that the proposal should improve market quality and enhance the production of fair and orderly quotations at the market opening.

One commenter, while generally approving of the proposal, opined that the 30-second time frame to clear pre-market locks and crosses was unnecessarily long, as locks and clears would most likely be resolved within the first few seconds of the automated process.[38] The Commission believes that Nasdaq has adequately addressed this concern. In particular, the Commission agrees with Nasdaq that the proposal clearly contemplates that the initial clearing of locks and crosses would be completed in much shorter time than 30 seconds. The Commission believes this is evidenced by the continued processing of incoming quotes/orders that would lock/cross the market between 9:29:30 a.m. and 9:29:59 a.m. The Commission believes that the continuous potential for execution of locked/crossed markets during the 30-second time frame should promote price discovery while reducing locked and crossed markets. In addition, the Commission believes that the proposal should deter inappropriate quotation or order-entry activity during this pre-market open timeframe. The Commission finds that these factors, when considered in tandem, should help to promote a smoother more efficient market opening for Nasdaq.[39]

Finally, the Commission finds good cause for approving Amendment Nos. 2 and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission finds that Amendment No. 2 provides a technical correction to the proposed rule language. In addition, the Commission finds that Amendment No. 3 provides: (1) An updated version of its proposed rule language reflecting changes to Nasdaq's rules that have occurred since the initial filing of this proposal, (2) a set time frame in which Nasdaq will evaluate whether the thirty-second pre-opening unlocking/uncrossing process time period should be shortened within 60 days of the complete roll-out of SuperMontage, and a commitment to report its findings to the Commission within 30 days thereafter; (3) a set time frame in which Nasdaq will monitor market participants' inability to send Trade-or-Move Directed Orders to SIZE during the Trade-or-Move process, and a commitment to file a proposed rule change with the Commission within 90 days of the complete roll-out of SuperMontage, to resolve any problems regarding the accessibility to SIZE; and (4) clarification that all quotes that reside in SuperMontage at the end of the trading day will be carried over to the next trading day, and that the quoting market participant could update the

[36] *See* notes 22–26 *supra* and accompanying text.

[37] *See* Securities Exchange Act Release No. 40455 (September 22, 1998), 63 FR 51978 (September 29, 1998) (order approving File No. SR–NASD–98–01).

[38] *See* note 26 *supra* and accompanying text.

[39] The Commission notes that Nasdaq has committed to study whether the pre-opening process can or should be shortened and will submit a report of its findings. *See* Amendment No. 3.

quote prior to the 9:20 a.m. Trade-or-Move process. The Commission finds that Amendment No. 3 does not change the proposal. Amendment No. 3 merely clarifies the proposal and commits Nasdaq to addressing technological issues within specified time frames. Consequently, the Commission finds good cause, consistent with section 6(b)(5) and section 19(b) of the Act to approve Amendment Nos. 2 and 3 to the proposed rule change on an accelerated basis.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[40] that the proposed rule change (SR–NASD–2002–56) and Amendment No. 1 are approved, and Amendment Nos. 2 and 3 are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[41]

Margaret H. McFarland,

Deputy Secretary.

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[40] 15 U.S.C. 78s(b)(2).

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46416; File No. SR–NASD–2002–98]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. to Eliminate the Regulatory Fee and Institute a New Transaction-Based Trading Activity Fee

August 23, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. On August 21, 2002, the NASD amended the proposed rule change.[3] The NASD designated one portion of the proposed rule change as establishing or changing a due, fee, or other charge pursuant to section 19(b)(3)(A)(ii) of the Act,[4] and Rule 19b–4(f)(2) thereunder,[5] which renders that portion of the proposed rule change effective upon filing with the Commission. The NASD designated the portion of the proposed rule change regarding the corporate name change as administrative pursuant to section 19(b)(3)(A)(iii) of the Act,[6] and Rule 19b–4(f)(3) thereunder, [7] which also renders that portion of the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* August 21, 2002 letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), SEC, and attachments (''Amendment No. 1''). In Amendment No. 1, the NASD provided new proposed rule language that completely replaces and supersedes the original proposed rule language, and also made minor technical changes to the proposed rule change. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have begun on August 21, 2002, the date the NASD filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(3).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend Schedule A to the NASD By-Laws to amend its member regulatory pricing structure. Under the current structure, three types of fees and assessments are used to fund the NASD's member regulatory activities: Regulatory Fee,[8] Personnel Assessment, and Gross Income Assessment.[9] The proposed restructuring is comprised of four amendments: (1) Eliminate the Regulatory Fee; (2) institute a new transaction-based Trading Activity Fee similar to the SEC's Section 31 Fee; (3) increase the rates assessed to member firms under the Personnel Assessment; and (4) implement a simplified three-tiered flat rate for the Gross Income Assessment and eliminate current deductions and exclusions.[10] This proposed rule change is a part of a package of two separate yet related rule filings [11] being filed with the Commission as a result of a review of the overall NASD pricing structure,[12] and is intended to address the first two amendments to the NASD pricing restructuring by eliminating the Regulatory Fee and instituting a new transaction-based Trading Activity Fee.

These fees assessed upon and paid by member firms are used by the NASD to fund the NASD's member regulatory activities, including the supervision and regulation of members through examinations, processing of membership applications, financial monitoring, policy, rulemaking, interpretative, and enforcement activities. These amendments to this pricing structure are intended to serve the following purposes: (1) Simplify the NASD's fee structure; (2) ensure fairness in the NASD's fee structure by assessing higher fees to those member firms that require more NASD regulatory services; (3) assess a transaction-based fee in a manner that, unlike the Regulatory Fee, does not influence where members choose to execute trades; (4) reduce the cyclical nature of the current NASD fee structure; and (5) eliminate the NASD's reliance on funds generated from the Regulatory Fee on transactions executed through Nasdaq.

The current structure of assessing Regulatory Fees for Nasdaq transactions is no longer appropriate for three reasons. First, Nasdaq is separating from the NASD and registering as a national securities exchange. Second, the current fee structure is out of step with recent changes in the markets, such as the drastic growth in trading volumes, reductions in average trade size, decimalization, and trading no longer remaining exclusive to the listing exchange. Finally, the Regulatory Fee is only assessed against Nasdaq-listed and other transactions that are reported through the Automated Confirmation Transaction (''ACT'') system,[13] although these fees are used to support member regulatory activities across all markets. In addition, the NASD is proposing revisions to the NASD By-Laws that are technical in nature to reflect the NASD's change in corporate name. For example, references to ''the Association'' have

[8] The Regulatory Fee is described in Section 8(a) of Schedule A to the NASD By-Laws.

[9] The Personnel Assessment and Gross Income Assessment are described in Section 1 of Schedule A to the NASD By-Laws.

[10] The changes resulting from the proposed restructuring would be revenue neutral.

[11] *See also* Securities Exchange Act Release No. 46417 (August 23, 2002)(SR–NASD–2002–99).

[12] The NASD, in its pricing restructuring review, proposed changes to the Regulatory Fee in *Special Notice To Members 02–09* and requested comments. NASD received a number of comments. In response to those comments, the proposal set forth in *Special Notice to* * * *.

[13] This package of filings proposes rule changes to the NASD's Member Regulation fees. It is not related to the recent Nasdaq filing regarding Nasdaq Regulatory Fee. *See* SR–NASD–2002–61.

been replaced with ''NASD'' throughout the By-Laws.

The text of the proposed rule change is below. Proposed additions are in italics; proposed deletions are in brackets.

Schedule A to [the] NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of [the] NASD shall be determined on the following basis.

* * * * *

Section [8] *2—Member Regulation* [Transaction] Fees

[(a) NASD fee on cleared transactions. Each member shall be assessed a transaction charge of $.0625 per 1,000 shares, with a minimum charge per side of $.025 and a maximum charge per side of $.46875 for each over-the-counter transaction with another member of the Association reportable through ACT in which the member acts either as an agent or a principal for the purchase and/or sale of equity securities.]

[(b) SEC transaction fee. Each member shall be assessed a SEC transaction fee. The amount shall be determined by the SEC in accordance with Section 31 of the Act.]

(a) Recovery of cost of services. NASD shall, in accordance with this section, collect Member Regulation fees that are designed to recover the costs to NASD of the supervision and regulation of members, including performing examinations, processing of membership applications, financial monitoring, policy, rulemaking, interpretive, and enforcement activities. NASD shall periodically review these revenues in conjunction with these costs to determine the applicable rate. NASD shall publish notices of the fees and adjustments to the assessment rates applicable under this section.

(b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.

(1) Covered Securities. For purposes of the rule, covered securities shall mean:

(i) All exchange registered securities wherever executed (other than bonds, debentures, and other evidence of indebtedness);

(ii) All other equity securities traded otherwise than on an exchange; and

(iii) All security futures wherever executed.

(2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:

(i) Transactions in securities offered pursuant to an effective registration statement under the Securities Act of 1933 (except transactions in put or call options issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by Section 3(a) or 3(b) thereof, or a rule thereunder;

(ii) Transactions by an issuer not involving any public offering within the meaning of Section 4(2) of the Securities Act of 1933;

(iii) The purchase or sale of securities pursuant to and in consummation of a tender or exchange offer;

(iv) The purchase or sale of securities upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security; and

(v) Transactions which are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in Rule 11Aa3–1 and any approved plan filed thereunder.

NASD may exempt other securities and transactions as it deems appropriate.

(3) Fee Rates

(i) Each member shall pay to NASD a fee per share for each sale of a covered security.

(ii) Each member shall pay to NASD a fee per contract for each sale of an option.

(iii) Each member shall pay to NASD a fee for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) of a security future.

(4) Reporting of Transactions. Members shall report to NASD the aggregate share, contract, and/or round turn volume of sales of covered securities in a manner as prescribed by NASD from time to time.

Section 3—SEC Transaction Fee

Each member shall be assessed an SEC transaction fee. The amount shall be determined by the SEC in accordance with Section 31 of the Act.

Section [2] *4*—Fees

(a) Each member shall be assessed a fee of $75.00 for the registration of each branch office, as defined in the By-Laws. Each member shall be assessed an annual fee for each branch office in an amount equal to the lesser of (1) $75.00 per registered branch, or (2) the product of $75.00 and the number of registered representatives and registered principals associated with the member at the end of [the Association] *NASD's* fiscal year.

(b) [The] NASD shall assess each member a fee of:

(1) $85.00 for each initial Form U–4 filed by the member with [the] NASD for the registration of a representative or principal, except that the following discounts shall apply to the filing of Forms U–4 to transfer the registration of representatives or principals in connection with acquisition of all or a part of a member's business by another member:

Number of registered personnel transferred	Discount
1,000—1,999	10%
2,000—2,999	20%
3,000—3,999	30%
4,000—4,999	40%
5,000 and over	50%

(2) $40.00 for each initial Form U–5 filed by the member with [the] NASD for the termination of a registered representative or registered principal, plus a late filing fee of $80.00 if the member fails to file the initial Form U–5 within 30 days after the date of termination;

(3) $20.00 for each amended Form U–4 or Form U–5 filed by the member with [the] NASD;

(4) No Change.

(5) $10.00 for each fingerprint card submitted by the member to [the] NASD, plus any other charge that may be imposed by the United States Department of Justice for processing such fingerprint card; and

(6) No Change.

(c) through (k) No Change.

(l)(1) Unless a specific temporary extension of time has been granted, there shall be imposed upon each member required to file reports, as designated by this paragraph, a fee of $100 for each day that such report is not timely filed. The fee will be assessed for a period not to exceed 10 business days. Requests for such extension of time must be submitted to [the Association] *NASD* at least three business days prior to the due date; and

(2) through (3) No Change.

* * * * *

Section [3]*5*—Elimination of Duplicate Assessments and Fees

No Change to rule language.

* * * * *

Section [4]*6*—Assessments and Fees for New Members, Resigning Members and Successor Organizations

(a) The assessment of a firm, which is not a member throughout [the Association] *NASD*'s full calendar year from January 1 to December 31, shall be based upon the number of quarter years of membership. The proration for a new member shall include the quarter year in which the member is admitted to membership. The proration for a member which resigns shall include the quarter year in which the member's

letter of resignation is received in [the Association] *NASD*'s Executive Office.

(b) A member [which] *that* is a successor organization to a previous member or members shall assume the unpaid balance of the assessments of its predecessor or predecessors and its next assessment shall be determined, if applicable, upon the assessment data of its predecessors. Such successor member shall not be required to re-register branch offices and personnel of predecessor members or pay registration fees therefor. Whether a member is the successor organization to a previous member or members shall be determined by [the Association] *NASD* upon a consideration of the terms and conditions of the particular merger, consolidation, reorganization, or succession. A member [which] *that* has simply acquired the personnel and offices of another member under circumstances [which] *that* do not constitute the member a successor organization shall not be required to assume the unpaid assessments of the other member. Such non-successor member shall be required to re-register the branch offices and personnel acquired from the other member and pay applicable registration fees.

Section [5]*7*—Gross Revenue for Assessment Purposes

No Change to rule language.

Section [6]*8*—Fees for Filing Documents Pursuant to the Corporate Financing Rule

(a) There shall be a fee imposed for the filing of initial documents relating to any offering filed with [the] NASD pursuant to the Corporate Financing Rule equal to $500 plus .01% of the proposed maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document (where not filed with the SEC), but shall not exceed $30,500. The amount of filing fee may be rounded to the nearest dollar.

(b) There shall be an additional fee imposed for the filing of any amendment or other change to the documents initially filed with [the] NASD pursuant to the Corporate Financing Rule equal to .01% of the net increase in the maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement, or any related Rule 462(b) registration statement, or reflected on any Rule 430A prospectus, or included on any other type of offering document. However, the aggregate of all filing fees paid in connection with an SEC registration statement or other type of offering document shall not exceed $30,500.

Section [7]*9*—Service Charge for Processing Extension of Time Requests

(a) No Change.

(b) The service charge for processing each initial extension of time request and for all subsequent extension of time requests (1) Involving the same transaction under Regulation T and/or (2) involving an extension of time previously granted pursuant to Rule 15c3–3(n) shall be $2.00; provided, however, that the service charge shall be $1.00 for extension of time requests filed electronically by members using [the Association] *NASD*'s Automated Regulatory Reporting System.

* * * * *

Section [9]*10*—Subscription Charges for Firm Access Query System (FAQS)

No Change to rule language.

Section [10]*11*—Request for Data and Publications

No Change to rule language.

Section [11]*12*—Reserved

No Change to rule language.

* * * * *

Section [12]*13*—Application and Annual Fees for Member Firms with Statutorily Disqualified Individuals

(a) Any member firm seeking to employ or continuing to employ as an associated person any individual who is subject to a disqualification from association with a member as set forth in Article III, Section 4 of [the Association] *NASD*'s By-Laws shall, upon the filing of an application pursuant to Article III, Section 3, paragraph (d) of [the Association] *NASD*'s By-Laws, pay to [the Association] *NASD* a fee of $1,500.00. Any member firm whose application filed pursuant to Article III, Section 3, paragraph (d) of [the Association] *NASD*'s By-Laws results in a full hearing for eligibility in [the Association] *NASD* pursuant to the Rule 9640 Series, shall pay to [the Association] *NASD* an additional fee of $2,500.00.

(b) Any member firm continuing to employ as an associated person any individual subject to disqualification from association with a member as set forth in Article III, Section 4 of [the Association] *NASD's* By-Laws shall pay annually to [the Association] *NASD* a fee of $1,500.00 when such person or individual is classified as a Tier 1 statutorily disqualified individual, and a fee of $1,000.00 when such person or individual is classified as a Tier 2 statutorily disqualified individual.

Section [13]*14*—Review Charge for Advertisement, Sales Literature, and Other Such Material filed or Submitted

There shall be a review charge for each and every item of advertisement, sales literature, and other such material, whether in printed, video or other form, filed with or submitted to [the Association] *NASD,* except for items that are filed or submitted in response to a written request from [the Association] *NASD's* Advertising Regulation Department issued pursuant to the spot check procedures set forth in [the Association] *NASD's* Rules as follows: (1) for printed material reviewed, $75.00, plus $10.00 for each page reviewed in excess of 10 pages; and (2) for video or audio media, $75.00, plus $10.00 per minute for each minute of tape reviewed in excess of 10 minutes.

Where a member requests expedited review of material submitted to the Advertising Regulation Department there shall be a review charge of $500.00 per item plus $25 for each page reviewed in excess of 10 pages. Expedited review shall be completed within three business days, not including the date the item is received by the Advertising Regulation Department, unless a shorter or longer period is agreed to by the Advertising Regulation Department. The Advertising Regulation Department may, in its sole discretion, refuse requests for expedited review.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Association has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Regulatory Fee, Personnel Assessment and Gross Income Assessment are currently used to fund NASD's member regulatory activities,

including the supervision and regulation of members through examinations, processing of membership applications, financial monitoring, policy, rulemaking, interpretive, and enforcement activities. This fee structure has become outdated, given the separation of NASD from Nasdaq, market developments, and market conditions. The proposed changes are revenue neutral and strive to better align NASD's Member Regulation fees with its functions, efforts, and costs.

The amendments to this pricing structure are intended to serve the following purposes: (1) Simplify NASD's fee structure; (2) ensure fairness in NASD's fee structure by assessing higher fees to those member firms that drive regulatory costs; (3) assess a transaction-based fee in a manner that, unlike the Regulatory Fee, does not influence where members choose to execute trades; (4) reduce the cyclical nature of the current NASD fee structure; and (5) eliminate NASD's reliance on funds generated from the Regulatory Fee on transactions executed through Nasdaq.

The NASD's membership population varies greatly with regard to factors that drive the cost of required regulation. Historically, member regulatory fees were derived primarily from industry revenues and Nasdaq transactions, while the NASD derived minimal fees from the registration of member firm personnel. One key priority during the review process is to link the costs of regulating NASD member firms to the fees generated by the member firms. The costs to regulate member firms include funding for examinations, processing of membership applications, financial monitoring, policy, rulemaking, interpretative, and enforcement activities.[14] The proposed amendments to the fee structure should result in a direct link of the cost of regulating a member firm to the fees assessed to and paid by that member firm. Therefore, as before, the three critical factors used to measure regulatory cost for NASD member firms are overall size of the member firm, level of trading activity and number of registered representatives. However, the weight from each as well as the benchmark used to measure industry revenues and transactions has been shifted under the proposed amendments to better link the fees assessed under these factors with NASD's costs. This proposal will maintain the current amount of fees received by NASD overall but promotes a more equitable method for assessing fees, thereby creating a level playing field.

Trading Activity Fee. The NASD currently assesses a Regulatory Fee upon its members, through approximately 250 clearing and self-clearing firms, on all transactions reported through Nasdaq's ACT system. This fee is only assessed against Nasdaq and other over-the-counter transactions, although the revenues are used to support member regulatory activities across all markets. The Regulatory Fee as assessed also has become a factor in determining upon which market members choose to execute trades. NASD, by its fee assessment, should not promote or disadvantage one trading venue over alternative trading venues. Therefore, the proposed rule change would eliminate the existing Nasdaq market-based Regulatory Fee and would institute a transaction-based Trading Activity Fee similar to the SEC's Section 31 Fee. The proposed fee would be assessed on the sell-side of all member transactions in all covered securities regardless of where the trade is executed.

The NASD anticipates that revenue from the collection of the Trading Activity fee will be reduced by approximately 50%. To offset the reduction in the Trading Activity Fee, the NASD filed SR–NASD–2002–99, which increases the rates for the Personnel Assessment. This increase will result in making the Personnel Assessment a more appropriate base to measure the cost of regulating member firms and fund member regulatory activities.

Phase-In. The NASD's overall proposal will be revenue neutral to the NASD. However, due to the link of revenues to regulatory services provided, there will be impacts, both negative and positive, on individual member firms. To minimize the impact on member firms, the restructuring of fees will be phased in over a three-year period. Specifically, for the Trading Activity Fee, since the revenue generated from this fee would be reduced by approximately 50%, the fee reduction will be phased in at a rate of 33% in Year 1, 67% in Year 2 and 100% in Year 3.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the Act, including section 15A(b)(5) of the Act,[15] which requires, among other things, that the NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The Trading Activity fee is objectively allocated to NASD members. Moreover, the level of the fee is reasonable because it relates to the recovery of the costs of supervising and regulating members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received on the current proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The portion of the proposed rule change regarding fees has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[16] and subparagraph (f)(2) of Rule 19b-4 thereunder,[17] because the proposal establishes or changes a due, fee, or other charge. The NASD will not implement this rule change until October 1, 2002.

The portion of the proposed rule change regarding the corporate name change to the NASD is effective pursuant to section 19(b)(3)(A)(iii) of the Act,[18] and Rule 19b-4(f)(3) thereunder,[19] because it is concerned solely with the administration of the NASD.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making

[14] The NASD's member regulatory revenues have funded its costs on average within 5% over the past five years. In years where shortfalls occurred, prices were not increased. In years where overage occurred, rebates were given to Members.

[15] 15 U.S.C. 78o-3(b)(5).

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b-4(f)(3).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b-4(f)(3).

written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–98 and should be submitted by September 20, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–22217 Filed 8–29–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46411; File No. SR–NASD–2002–92]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Establishment of Day and Good-Till-Cancelled Order Designations for Non-Directed Orders in the Nasdaq SuperMontage

August 23, 2002.

I. Introduction

On July 1, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish ''Good-till-Cancelled'' (''GTC'') and ''Day'' designations for Non-Directed Orders and clarify the processing of such orders when held in Nasdaq's future Order Display and Collector Facility (''SuperMontage''). The proposed rule change was published for comment in the **Federal Register** on July 5, 2002.[3] The Commission did not receive any comment letters regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Nasdaq proposes to establish Day and GTC order designations for Non-Directed Orders in SuperMontage. Under the proposal, a Day order would be held in SuperMontage for potential display and/or execution (unless cancelled by the entering party) until the 4:00 p.m. Eastern Standard Time (''EST'') Nasdaq market close. At the market close, the order, if not fully executed, would be removed from the system and returned to the entering party. A GTC order would be held in the SuperMontage for potential display and/or execution (unless cancelled by the entering party) for up to one year. At the market close of the one-year anniversary date, the order, if not fully executed, would be removed from the Nasdaq system and returned to the entering party. If this anniversary date fell on a date when the Nasdaq market was closed, the GTC order would be purged after the close of the next business day.

Market makers, Electronic Communication Networks (''ECNs''), and Unlisted Trading Privileges Exchanges (collectively ''Quoting Market Participants'') could designate a non-directed limit order as Day, GTC, or Immediate or Cancel (''IOC''). If a Quoting Market Participant entered a non-directed limit order without a designation, such an order would be designated as IOC, the system's default designation.[4]

Under the proposal, whenever a Non-Directed Order designated as Day or GTC is entered into the system, it would receive a time stamp to be used in determining the order's price/time priority consistent with the current SuperMontage rules.[5] Day and GTC orders would be executed pursuant to the execution algorithm selected (price/time (default), price/time taking into account access fees, and price/size/time) by the entering market participant.[6] Day orders could be entered into SuperMontage during the Pre-Market Session through Normal Market Hours. GTC orders could be entered into SuperMontage during the Pre-Market Session through the After Hours Session. Day and GTC orders would be eligible for execution during the Nasdaq Unlocking/Uncrossing Session (beginning at 9:29:30 a.m. EST) throughout the Normal Market Hours (ending at 4:00 p.m. EST). At the close of Normal Market Hours, unexecuted Day orders would expire and be returned to the entering participant. GTC orders that are not executed or cancelled would continue residing in the system at the close of Normal Market Hours, however, such orders would not be eligible for execution through the Non-Directed Order process during the Nasdaq After-Hours Session. Thus, after the 4:00 p.m. EST market close, GTC orders residing in the system would not be eligible for execution through the Non-Directed Order process until the following business day at 9:29:30 a.m. EST.

To clarify that the SuperMontage will accept, retain, display, and execute orders at multiple price levels, Nasdaq also proposed to remove the term ''marketable'' from the text of Rule 4706(a)(1)(B).

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 15A.[8] Specifically, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Act because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46155 (July 1, 2002), 67 FR 44914.

[4] An IOC order if not immediately executed is canceled from the system and returned to the order entry participant.

[5] As contemplated, SuperMontage will have four distinct time periods over the course of the trading day: (1) The Pre-Market Session (7:30 a.m. to 9:29:29 a.m. EST), (2) the Pre-Open Unlocking/Uncrossing Process (9:29:30 a.m. to 9:29:59 a.m. EST), (3) Normal Market Hours (9:30 a.m. to 4:00 p.m. EST), and (4) the After-Hours Session (4:00 p.m. to 6:30 p.m. EST). *See* Securities Exchange Act Release No. 46410, (August 23, 2002) (approving amendments to SuperMontage Pre-Market Session including the Pre-Open Unlocking/Uncrossing Process) and File No. NASD–2002–114 (extending the Nasdaq After-Hours Pilot to SuperMontage).

[6] If a Non-Directed Order is entered by a Market Maker or ECN, SuperMontage will, before sending it to a Quoting Market Participant, first attempt to match the order off against the entering party's own quote/order, if that quote/order is at the best price in Nasdaq. *See* Rule 4710(b)(1)(B)(iv)(a). Parties entering Non-Directed Orders also have an option to preference such orders to a particular market participant. *See* Rule 4710(b)(1)(B)(iv)(b).

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78*o*–3.

and coordination with persons engaged in regulating, clearing, settling processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[9]

The Commission finds that Nasdaq's proposal to allow Quoting Market Participants to enter GTC and Day orders, in addition to IOC orders, is consistent with the Act. In particular, the addition of GTC and Day orders will provide SuperMontage participants with more options beyond IOC orders for entering orders into the system. The Commission believes that the flexibility added by the proposal will give Quoting Market Participants more options in the designation of order types, which in turn should allow the trading interest and strategies of customers to be better reflected in SuperMontage. The Commission also notes that other market centers, including the New York Stock Exchange (''NYSE'') and the Pacific Stock Exchange Equities (''PCXE'') allow the use order of Day or GTC order types.[10]

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NASD–2002–92) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–22218 Filed 8–29–02; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] *See* NYSE Rule 13 and PCXE Rule 7.31(c).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Use of Digital or Other Electronic Signature Technologies

AGENCY: Social Security Administration (SSA).

ACTION: Notice; comments requested.

SUMMARY: The Social Security Administration (SSA) is reviewing its procedures for the consideration and the approval of electronic signature technologies in lieu of traditional hard copy (''wet'') signatures. This notice explains SSA's authority to accept the use of electronic signature technologies when the Agency makes available options for electronically transacting program business with SSA or with State agencies acting on the Agency's behalf. We are also asking for public comments on the portion of this notice that deals with SSA's electronic signature policy.

In addition, we are giving notice about a pilot program to evaluate the use of digital signature technology. SSA is currently cooperating with a State of California pilot intended to explore the feasibility of using digital signature technology in an aspect of the Social Security Disability Insurance and the Supplemental Security Income programs.

The pilot involves the electronic transmission of medical records that require a signature (*i.e.*, reports of consultative examinations) by a large medical provider to the SSA and to the California State Disability Determination Services (DDS). In the pilot, SSA and the California DDS are accepting electronic medical reports for a 90-day period and are using only these electronic documents to process claims for social security benefits. During this period, SSA and the California State DDS are to evaluate, in accordance with existing regulations, the information contained in the electronic medical evidence submitted during the pilot.

DATES: Submit your comments on SSA's electronic signature policy on or before September 30, 2002.

ADDRESSES: You may give us your comments by using our Internet site facility (*i.e.*, Social Security Online) at *http://www.ssa.gov/regulations,* e-mail to *regulations@ssa.gov;* or telefax to (410) 966–2830; or by letter to the Commissioner of Social Security, PO Box 17703, Baltimore, Maryland 21235–7703.

You may also deliver them to the Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them physically on regular business days by making arrangements with the contact person shown in this notice.

FOR FURTHER INFORMATION: Fred Graf, Office of Program Benefits, Social Security Administration, 744 Altmeyer Building, 6401 Security Blvd., Baltimore MD 21235–6401; telephone (410) 965–7917; telefax 410 965–8582.

SUPPLEMENTARY INFORMATION:

SSA Electronic Signature Policy

Pursuant to the Government Paperwork Elimination Act (GPEA), SSA is reviewing electronic signature technologies for possible use in proposed SSA electronic business processes. Approved electronic signature technologies will be used to authenticate the identity of individuals for specific electronic transactions. Further, approved electronic signature technologies will be deemed by the Agency to convey the same authority to an individual as that associated with the traditional paper-based or ''wet'' signature.

GPEA states that electronic records and their related electronic signatures are not to be denied legal effect, validity, or enforceability merely because they are in electronic form. GPEA and implementation guidelines issued by the Office of Management and Budget (OMB) encourage Federal agencies to accept a variety of electronic signature technologies.

SSA's policy, contained in Social Security Ruling (SSR) 96–10p, further provides that information or documents, for which a signature is required, can be signed using digital or other electronic technologies approved by us, provided that the digital or other electronic signature reasonably ensures that the signer can be identified and that the signer cannot later repudiate the submission of the information. SSR 96–10p expands the meaning of the term ''signature'' for SSA's activities to include electronic and digital methods that serve the purpose of originator identification, authentication, and non-repudiation. Thus, SSR 96–10p provides that information for which a signature is required may be signed using digital or other electronic technologies approved by us.

The Social Security Act does not mandate a signature on SSA documents or forms. However, SSA's regulations prescribe a signature for some SSA business applications and information. Where our regulations are silent regarding a signature, our procedures may still require, as a matter of policy, individuals to include a signature on information or documents submitted to us.

When we convert to or adopt new electronic procedures to perform specific business processes that require a signature, we will conduct a risk analysis as OMB guidelines and as applicable social security ruling(s) prescribe. Based on the statutory/

regulatory requirement and/or the results of a risk analysis, we will select and approve digital or other electronic signature technology and any other procedures that, in our judgment, are appropriate to electronically perform the business process.

Our risk analysis will depend largely upon the specific business process which we contemplate providing electronically or over the Internet. Generally, we anticipate that the analysis will examine how the conversion of a business process electronically or over the Internet will affect service to the public. Additionally, we will examine how to appropriately manage potential legal risks associated with an electronic business process, (including fraud detection, prevention, and prosecution concerns). In the planning and selection of appropriate procedures and electronic signature technologies, we will consider factors associated with traditional paper-based processes, such as originator authentication, message integrity, non-repudiation, and confidentiality.

Our approval process for electronic signature technologies is detailed in processing instructions. SSA senior management will approve the use of electronic signature technologies and related procedures with input from SSA components involved in the specific business application that we are electronically providing.

When SSA senior management has approved an electronic service delivery process or adopted an electronic process using an electronic signature technology, the information received or distributed through the approved process will be treated as the functional equivalent of information received or distributed using traditional paper-based methods.

As indicated above, we are asking for your comments on our electronic signature policy.

Use of Medical Evidence and the Electronic Signature Pilot

SSA and the State DDS have the authority to accept medical evidence in order to determine if an applicant for social security benefits is disabled and entitled to benefits. The Social Security Act vests the authority to make the initial medical determinations in a State DDS where the applicant resides. 42 U.S.C. 405(a), 421, 423(d). The State DDS evaluates the medical evidence in accordance with SSA's regulations and such other internal procedures as SSA shall prescribe.

SSA's procedures permit a State DDS to accept medical evidence, provided that the claims file contains an acceptable attestation regarding the source and the validity of the submitted medical record. Currently, SSA's procedures permit a variety of attestations and do not require a medical provider's signature as attestation for most medical evidence. SSA's regulations do prescribe a signature for the receipt of a certain type of medical evidence, called a consultative examination report. At the request of the State DDS, a medical provider that is usually under contract prepares the consultative examination report.

SSA's regulations require that a consultant examiner personally review and sign the consultative examination report submitted to the SSA or State DDS. In the pilot, SSA and the California DDS plan to test for 90 days the use exclusively of electronic consultative examination reports that are authenticated by digital signature technology. The pilot will affect only a small number of disability cases in part of the State of California.

SSA construes its regulations, policy, and the authorization given under GPEA, to permit SSA and a State DDS to accept an electronic medical report transmitted by a consultative examiner using a digital signature technology in lieu of a hard copy report authenticated by the wet signature of the consultative examiner.

Authority: 42 U.S.C. 405(a), 421, 423(d); Pub. L. 105–277, Div. C, Title XVII, 1701 to 1710, Oct. 21, 1998, Social Security Ruling 96–10p; 20 CFR 404.1519n(e); 416.919n(e).

Dated: August 23, 2002.

Martin H. Gerry,

Deputy Commissioner for Disability and Income Security Programs.

[FR Doc. 02–22286 Filed 8–29–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4114]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Old Masters, Impressionists, and Moderns: French Masterworks from the State Pushkin Museum, Moscow''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition ''Old Masters, Impressionists, and Moderns: French Masterworks from the State Pushkin Museum, Moscow,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at The Museum of Fine Arts, Houston, TX from on or about December 15, 2002 to on or about March 9. 2003, the High Museum of Art, Atlanta, GA from on or about April 5, 2003 to on or about June 29, 2003, and the Los Angeles County Museum of Art, Los Angeles, CA from on or about July 27, 2003 to on or about October 12, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 22, 2002.

Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–22223 Filed 8–29–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4113]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Paris in the Age of Impressionism: Masterworks From the Musée d'Orsay''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999,

as amended, I hereby determine that the object to be included in the exhibition'' Paris in the Age of Impressionism: Masterworks from the Musée d'Orsay,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the High Museum of Art, Atlanta, GA from on or about November 23, 2002 to on or about March 16, 2003, the Museum of Fine Arts, Houston, TX from on or about April 6, 2003 to on or about June 29, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 22, 2002.

Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–22222 Filed 8–29–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4112]

Culturally Significant Objects Imported for Exhibition Determinations: ''Théodore Chassériau (1819–1856): The Unknown Romantic'' and ''Manet/Velázquez: The French Taste for Spanish Painting''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibitions ''Théodore Chassériau (1819–1856): The Unknown Romantic'' and ''Manet/Velázquez: The French Taste for Spanish Painting'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects in ''Thodore Chassériau (1819–1856): The Unknown Romantic'' at The Metropolitan Museum, New York, NY from on or about October 21, 2002 to on or about January 5, 2003, and ''Manet/Velázquez: The French Taste for Spanish Painting,'' at The Metropolitan Museum, New York, NY from on or about February 24, 2003 to on or about June 8, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 22, 2002.

Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–22221 Filed 8–29–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice # 4085]

Notice of Meetings; United States International Telecommunication Advisory Committee Preparations for Various Telecommunication Standardization Meetings

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on policy, technical and operational issues with respect to international telecommunications standardization bodies such as the International Telecommunication Union.

The ITAC will meet electronically to prepare for the ITU–T Special Study Group September 16–20. Documents must be posted to ''*sgb-ssg@almsntsa.lmlist.state.gov*'' by September 16; comments on the documents posted to the same address by September 18, responses posted by September 20, and final action will be posted by the Department of State on September 23. If necessary, this meeting may be continued through a later date. People not already members of the ''sgb-ssg'' reflector may join by contacting *minardje@state.gov* by e-mail. The ITAC will also conduct a conference call on September 17 to discuss approaches to anticipated agenda items.

The ITAC will meet to prepare for ITU–T Study Group 16 on September 18 from 9:30 until noon at the Department of State in a room to be announced.

The ITAC will meet to prepare for ITU–T Study Groups 11 and 13 on October 10 at 9:30 a.m. at the U.S. Department of Commerce, 325 Broadway, Room 1107 Boulder, CO 80305.

The ITAC will meet electronically to prepare for SG17 from October 28–November 6. Documents must be posted to ''*sgd@almsntsa.lmlist.state.gov*'' by October 28; comments on the documents posted to the same address by October 31, responses posted by October 4, and final action will be posted by the Department of State on October 6. People not already members of the ''sgd'' reflector may join by contacting *minardje@state.gov* by e-mail.

The ITAC will meet from 9:30 to noon on November 6 at a location to be determined in Washington, DC to prepare for ITU–T SG2.

The ITAC will meet electronically from November 11 to 15, 2002 to recommend approval of normal (white) contributions to the ITU–T SG 15 Meeting of January 20–31, 2003. This meeting will be announced on the reflector at <*sgb@almsntsa.lmlist.state.gov*>.

The ITAC will meet from 9:30 to noon on November 20 at a room at the Federal Communications Commission, Washington, DC to prepare for ITU–T SG3.

The ITAC will meet on December 17, 2002 to prepare for the ITU–T SG 15 meeting at a location in Northern Virginia to be announced.

Members of the public will be admitted to the extent that seating is available, and may join in the discussions, subject to the instructions of the Chair. Entrance to the Department of State is controlled; people intending to attend a meeting at the Department of State should send their clearance data by fax to (202) 647–7407 or e-mail to *worsleydm@state.gov* not later than 24 hours before the meeting. Please include the name of the meeting, your name, social security number, date of birth and organizational affiliation. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or U.S. Government identification. Directions to the meeting location may be obtained by calling the

ITAC Secretariat at 202 647–2592 or e-mail to *worsleydm@state.gov.*

Dated: August 22, 2002.

Douglas R. Spalt,

Alternate Director, Radiocommunication Standardization, U.S. Department of State.

[FR Doc. 02–22220 Filed 8–29–02; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–13233]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Towing Safety Advisory Committee (TSAC) and its working groups will meet as required to discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. All meetings will be open to the public.

DATES: TSAC will meet on Friday, September 13, 2002, from 8 a.m. to 3 p.m. The working groups will meet on Thursday, September 12, 2002, from 9 to 3:30 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before September 5, 2002. Requests to have a copy of your material distributed to each member of the Committee or working groups should reach the Coast Guard on or before September 5, 2002.

ADDRESSES: On Friday, TSAC will meet in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. On Thursday, the working groups will first meet briefly in the cafeteria at the same address and then move to separate spaces designated at that time. Send written material and requests to make oral presentations to Mr. Gerald P. Miante, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice and the draft task statement are available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Assistant Executive Director, or LCDR Lance Lindsay, telephone 202–267–0214, fax 202–267–4570, or e-mail at: *gmiante@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Committee Meeting

The agenda tentatively includes the following:

(1) Status Report of the Crew Alertness Working Group;

(2) Status Report of the Towing Vessel Regulatory Review Working Group;

(3) Status Report Licensing Implementation Working Group;

(4) Status Report of the Maritime Security Working Group;

(5) Presentation on the Inland River Security Partnership;

(6) Presentation on Towboat Compliance and Prevention of SOLAS Detentions;

(7) Presentation on the Port Security Assessment Program; and

(8) Consideration of draft Task Statement 02–02 ''Adequacy of Navigation Lights for Inland River Barge Tows.''

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. Members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Assistant Executive Director no later than September 5, 2002. Written material for distribution at a meeting should reach the Coast Guard no later than September 5, 2002. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 17 copies to the Assistant Executive Director no later than September 2, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant Executive Director as soon as possible.

Dated: August 26, 2002.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 02–22266 Filed 8–29–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airworthiness Approval of Global Navigation Satellite System (GNSS) Equipment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Amended notice of availability and request for public comment.

SUMMARY: This amended notice announces the availability of and requests comments on a revised draft Advisory Circular (AC) 20–138A, Airworthiness Approach of Global Navigation Satellite System (GNSS) Equipment. This notice was amended to change the Web site address for obtaining a copy, because the previous Web site address was incorrect. The draft AC on GNSS equipment addresses the following types of installations:

a. GNSS sensors, including those incorporating Wide Area Augmentation System (WAAS), Local Area Augmentation System (LAAS), or the Russian Global Navigation Satellite System (GLONASS).

b. GNSS stand-alone navigation equipment that provides deviations (including Category 1 precision approach).

DATES: Comments submitted must be received on or before September 25, 2002.

ADDRESSES: Send all comments on the proposed advisory circular to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionics Systems Branch, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Bruce DeCleene, Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 385–4640, FAX: (202) 267–5340.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the draft AC listed in this notice by submitting such written data, views, or arguments, as they desire, to the aforementioned specified address. Comments must be marked ''Comments to AC 20–138A.'' Comments received on the draft advisory circular may be examined, both before and after the closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified will be

considered by the Director of the Aircraft Certification Service before issuing the final AC.

Background

The FAA is developing a new Advisory Circular, AC 20–138A, Airworthiness Approval of Global Navigation Satellite System (GNSS) Equipment. This advisory circular (AC) provides guidance material for the airworthiness approval of all types of GNSS equipment. This revision to the current AC is in support of the deployment of the Wide Area Augmentation System (WAAS) and the Local Area Augmentation System (LAAS). WAAS services will be commissioned in 2003, providing en route, terminal area, and approach navigation. WAAS avionics may be approved under an authorization to Technical Standard Order (TSO) C–1145a, GPS/WAAS Sensors, or TSO–C146a, GPS/WAAS Stand Alone Navigation Equipment. This equipment may be installed prior to the commissioning of WAAS, and this AC is needed to provide the unique policy applicable to such installations. In addition, the LAAS will become operational in 2004. LAAS guidance is included in this AC to support the early installation of the associated avionics.

How To Obtain Copies

A copy of the revised draft AC may be obtained using the Internet Web site address *http://www.airweb.faa.gov/RGL* or you may request a copy from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC.

Kimberly K. Smith,

Acting Deputy Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 02–21787 Filed 8–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Guidance Material for 14 CFR 33.19, Durability, for Reciprocating Engine Redesigned Parts

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed Advisory Circular (AC) Number 33.19–1, Guidance Material For 14 CFR 33.19, Durability, For Reciprocating Engine Redesigned Parts.

DATES: Comments must be received on or before October 31, 2002.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Mark Rumizen, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: Mark Rumizen, Engine and Propeller Standards Staff, ANE–110, at the above address; telephone: (781) 238–7113; fax: (781) 238–7199; e-mail: *mark.rumizen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named under **FOR FURTHER INFORMATION CONTACT** or by downloading the proposed AC from the following Internet Web site: *http://www.airweb.faa.gov/rgl.* The FAA invites interested parties to comment on the proposed AC. Comments should identify the subject of the AC and be submitted to the individual identified under **FOR FURTHER INFORMATION CONTACT**. The FAA will consider all communications received by the closing date before issuing the final AC.

Background

This AC provides guidance and acceptable methods, but not the only methods, that may be used to demonstrate that redesigned parts for reciprocating engines comply with the requirements of 14 CFR 33.19 or § 13.104 of the Civil Air Regulations (CAR). This AC addresses type design changes, parts manufacturing approvals (PMA), and supplemental type certificates (STC) for critical, highly stressed, or complex parts in reciprocating engines.

(Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.)

Issued in Burlington, Massachusetts, on August 21, 2002.

Francis Favara,

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

[FR Doc. 02–22120 Filed 8–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Avionics Manufacturers Standardization Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of avionics manufacturers standardization meeting.

SUMMARY: Notice is hereby given that the Small Airplane Directorate of the Federal Aviation Administration (FAA) is hosting a meeting on October 30, 2002, for Avionics Manufacturers to discuss and identify a minimum number of standardized ''essential functions'' for electronic flight information systems (EFIS) emerging in the general aviation market.

FOR FURTHER INFORMATION CONTACT: Direct all questions to: Lowell Foster, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, room 301, Kansas City, Missouri 64106; telephone: (816) 329–4125; facsimile: (816) 329–4090; e-mail at <*lowell.foster@faa.gov*>.

SUPPLEMENTARY INFORMATION: Manufacturers and other interested persons are invited to assist the FAA's Small Airplane Directorate in identifying a minimum number of standardized ''essential functions'' for EFIS including, but not limited to, global positioning systems (GPS), multifunction displays (MFDs), and primary flight display (PFDs).

The meeting is scheduled for October 30, 2002, in Kansas City, Missouri, with the specific location to be identified later. More information about the meeting agenda and location will be available at: <*http://www.faa.gov/certification/aircraft/small_airplane_directorate_news.htm*>.

Issued in Kansas City, Missouri, on August 21, 2002.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–22268 Filed 8–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Miami International Airport, Miami, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Miami International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 30, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Angela Gittens, Executive Director of the Miami-Dade Aviation Department at the following address: Miami-Dade Aviation Department, P.O. Box 59075, Miami, Florida 33159–2075.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Miami-Dade Aviation Department under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Miguel A. Martinez, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, (407) 812–6331, extension 23. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites pubic comment on the application to impose and use the revenue from a PFC at Miami International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 23, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Miami-Dade Aviation Department was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 12, 2002.

The following is a brief overview of the application.

PFC Application No.: 02–04–C–00–MIA.

Level of the proposed PFC: $4.50.

Proposed charge effective date: February 1, 2003.

Proposed charge expiration date: October 1, 2037.

Total estimated net PFC revenue: $2,420,400,341.

Brief description of proposed project(s): North Terminal Development, South Terminal Development.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 Air Taxi.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Miami-Dade Aviation Department.

Issued in Orlando, Florida on August 23, 2002.

Bart Vernace,

Acting Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 02–22272 Filed 8–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose and Use a Passenger Facility Charge (PFC) at Reno/Tahoe International Airport, Reno, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Reno/Tahoe International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 30, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Christopher Horton, Manager of Finance, Airport Authority of Washoe County, Airport Department at the following address: P.O. Box 12490, Reno, NV 89510. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Airport Authority of Washoe County under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Reno/Tahoe International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 14, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport Authority of Washoe County was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 13, 2002. The following is a brief overview of the impose and use application No. 02–06–C–00–RNO:

Level of proposed PFC: $4.50.

Proposed charge effective date: August 1, 2001.

Proposed charge expiration date: November 1, 2003.

Total estimated PFC revenue: $10,000,000.

Brief description of the proposed project: Acquisition of Lazovich and B & C Properties.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at

the Airport Authority of Washoe County.

Issued in Lawndale, California, on August 14, 2002.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 02–22271 Filed 8–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Savannah International Airport, Savannah, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Savannah International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 30, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Patrick S. Graham, Executive Director of the Savannah Airport Commission at the following address: Savannah Airport Commission, 400 Airways Avenue, Savannah, Georgia 31408.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Savannah Airport Commission under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Phillip Cannon, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747, 404–305–7152. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Savannah International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 22, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Savannah Airport Commission was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than Date 120 Days Past Receipt Application or Supplement.

The following is a brief overview of the application.

PFC Application No.: 02–05–C–00–SAV.

Level of the proposed PFC: $4.50.

Proposed charge effective date: July 1, 2012.

Proposed charge expiration date: May 1, 2013.

Total estimated PFC revenue: $3,015,790.

Brief description of proposed project(s):

PAPI Runways 9 and 36 AIP 34
AAAE Interactive Training Package AIP 34
Finger Print Machine AIP 34
Design & Construction, New Ammo Bunker AIP 36
Purchase 6 Baggage Lifts & Installation
PFC Administration & Implementation
Purchase and Renovate 6 Loading Bridges
Flight Information Display System
South Bag Carousel #1
Design and Construct GA Taxiways

Class or classes of air carriers which the Savannah Airport Commission has requested not be required to collect PFCs: Air taxi/Commercial operators (ATCO) filing form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Savannah Airport Commission.

Issued in College Park, Georgia, on August 22, 2002.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 02–22122 Filed 8–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Statement No. ANM–02–115–20; Corded Electrical Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy that addresses potential hazards associated with the installation of corded electrical devices used in the passenger cabin.

DATES: Send your comments on or before September 30, 2002.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM–115, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2195; fax (425) 227–1149; e-mail: *alan.sinclair@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/devpaper.cfm.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The FAA invites your comments on this proposed policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT.** Mark your comments, ''Comments to Policy Statement ANM–02–115–20.''

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

The proposed policy provides an applicant with various certification options, which will require little or no on-aircraft evaluation of corded devices, provided that these devices meet certain basic criteria. Examples of corded electrical devices are telephone handsets and video system controllers. This guidance supersedes the previously issued guidance in this area.

Issued in Renton, Washington, on August 15, 2002.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–22121 Filed 8–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–02–113–016]

Guidance for the Certification of Honeywell Primus Epic® Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy that clarifies current FAA policy with respect to certification of Honeywell Primus Epic® Systems.

DATE: Send your comments on or before September 30, 2002.

ADDRESS: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Connie Beane, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Standardization Branch, ANM–113, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2796; fax (425) 227–1320; e-mail: *connie.beane@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/devpaper.cfm.* If you do not have access to the Internet, You can obtain a copy of the policy statement by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The FAA invites your comments on this proposed policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT.** Mark your comments, ''Comments to Policy Statement ANM–02–113–016.''

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

In the past several years, new aircraft designs have introduced new technologies. These technologies are being combined and used in novel ways and may represent significant challenges with respect to the acceptability of the flightcrew interfaces and aircraft airworthiness.

Honeywell Primus Epic® systems are an avionics suite consisting of single or multiple racks/cabinets with circuit cards or modules that plug into the cabinets. Each racks/cabinets is configurable in that the number of modules can vary in each cabinet; the functions loaded into the cards can vary considerably, and there can be multiple racks/cabinets per aircraft. The functionality of the system is determined by the software loaded into the circuit cards. All the software on these circuit cards can be field-loaded, that is, loaded into the Honeywell Primus Epic® modules without removing the equipment from the aircraft.

Issued in Renton, Washington, on August 21, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–22273 Filed 8–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition, DP02–001

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety in certain Lexus LS 430 vehicles equipped with the Lexus Link System. After reviewing the petition and other information, NHTSA has concluded that further expenditure of the agency's investigative resources on the issues raised by the petition does not appear to be warranted. The agency accordingly has denied the petition. The petition is hereinafter identified as DP02–001.

FOR FURTHER INFORMATION CONTACT: Jonathan White, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–5226.

SUPPLEMENTARY INFORMATION: Mr. Jorge A. Gomez of Michael Best & Friedrich LLP in Milwaukee, Wisconsin, submitted a petition by letter dated November 16, 2001, requesting NHTSA to commence a proceeding to determine the existence of a defect related to motor vehicle safety in certain Lexus model vehicles equipped with the Lexus Link System (subject vehicles). The petitioner alleges that the Lexus Link System in the model year 2001 Lexus LS 430 (VIN JTHBN30F510023113—hereafter as ''petition vehicle'') leased by Sensient Technologies Corporation appeared to be activated by an automated voice message ''The Lexus Link System is activated'' when the ignition is turned on, but in fact was not. The petitioner further alleges that the driver of the vehicle was unable to place an emergency call to the Lexus Link Call Center after an accident, and that the Lexus Link System apparently requires manual activation by the dealership or the manufacturer.

The Lexus Link System is available as an option only on Lexus LS 430 vehicles beginning with model year 2001. This built-in, cellular-based communication system allows the vehicle occupant to communicate with the Lexus Link Call Center for safety, security, and convenience services. The Lexus Link System also is able to locate the vehicle using Global Position System (GPS) technology. The system is only operational in GPS and analog cellular coverage areas.

According to the response by Toyota Motor North America, Inc. (Toyota) to ODI's Information Request (IR) letter, there were 36,424 model year 2001–2002 Lexus LS 430 vehicles sold in the

United States equipped with a factory-installed Lexus Link System. Upon new vehicle purchase, the first year of the Lexus Link service is free unless the vehicle purchaser (or lessee) declines the service. However, in order for the Lexus Link System to be initially activated when a vehicle is sold (or leased), a dealer representative must complete a Service Subscription Agreement (SSA), which must be signed by the owner (or lessee). The SSA must be completed and signed before the service or sales department can activate the Lexus Link System. Toyota's IR response indicated that there was no Lexus Link SSA found for the petition vehicle, and therefore the petition vehicle never had the service activated.

Toyota acknowledged in its response that confusion may occur due to the current Lexus Link System's voice message, since it alerts the driver to its ''active'' status each time the ignition is turned on, even where the service is not available. This is especially the case when someone other than the owner operates the vehicle; the driver may misunderstand the system's availability in light of the voice message. In order to correct this potential misunderstanding, and to improve customer satisfaction with the Lexus Link System function, Toyota has indicated that they will make a prospective production change and will conduct a service campaign to change the system's voice message for vehicles already sold.

Toyota also indicated that it has received 54 complaints, 64 field reports, and one lawsuit (filed by the petitioner) concerning various malfunctions and reception concerns with the Lexus Link System. Of these complaints and field reports, none alleges that there was an aggravated medical condition because emergency medical help was not forthcoming as a result of the failure to communicate with the Lexus Link Center for assistance; and only three complainants indicated that they were misled into believing that the Lexus Link System was activated when, in fact, it was never activated at the time of vehicle purchase. ODI also reviewed its database and found no record of any related complaints.

Despite the fact that the system's voice message may potentially confuse the driver as to service availability, the available data does not appear to indicate that a safety-related defect exists. A subject vehicle occupant without the Lexus Link System service available for any reason is exposed to no greater risk than those who do not have the system.

In view of the foregoing, it is unlikely that NHTSA would issue an order for the notification and remedy of the alleged defect as defined by the petitioner in the subject vehicles at the conclusion of the investigation requested in the petition. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: August 22, 2002.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 02–22123 Filed 8–29–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 619X)]

CSX Transportation, Inc.-Abandonment Exemption-in Allegan County, MI

On August 12, 2002, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a portion of its line of railroad in its Western Region, Chicago Division, Grand Rapids Subdivision, Hamilton Industrial Track, extending from milepost CGB 19.00 in Holland, MI, to milepost CGB 12.90 in Hamilton, MI, a total distance of approximately 6.1 miles. The line traverses U.S. Postal Service Zip Codes 49423 and 49419.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by November 29, 2002.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than September 19, 2002. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 619X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Natalie S. Rosenberg, 500 Water Street—J150, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before September 19, 2002.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [Federal Information Relay Service (FIRS) for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV.*

Decided: August 22, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–21913 Filed 8–29–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–575 (Sub-No. 1X)]

Montana Rail Link, Inc.—Abandonment Exemption—in Lake County, MT

On August 13, 2002,[1] Montana Rail Link, Inc. (MRL) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 4.35-mile line of railroad, including rail yard facilities in Polson, MT, between milepost 29.05 and milepost 33.40 on MRL's 11th Branch Line Subdivision, in Lake County, MT. The line traverses U.S. Postal Service Zip Code 59860, and includes the station of Polson.

The line does not contain federally granted rights-of-way. Any documentation in MRL's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

[1] The petition was initially received on June 12, 2002, but was incomplete and only a partial fee was provided. The balance was received on July 22, 2002, but all missing information was not provided until August 13, 2002. Hence, that date will be considered the filing date.

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by November 29, 2002.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than September 19, 2002. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–575 (Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Steven Werner, Montana Rail Link, 101 International Way, P.O. Box 16390, Missoula, MT 59808–6390. Replies to the petition are due on or before September 19, 2002.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *''http://www.stb.dot.gov.''*

Decided: August 23, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–22209 Filed 8–29–02; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register

Vol. 67, No. 169

Friday, August 30, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

Federal Supply Service; Household Goods Tender of Service (HTOS); Conversion of Centralized Household Goods Traffic Management Program (CHAMP) Flat Industrial Funding Fee (IFF) to a Percentage IFF

Correction

In notice document 02–20127 beginning on page 51856 in the issue of Friday, August 9, 2002 make the following correction:

On page 51858, the second table is corrected to read as set forth below.

Examples:

(1) Domestic:

A	B	C	D	E	F	G	H	I	J	K	L
S	GSAA	GD	HHG	RXPG8TY43	Q794912349XXXXX	19990612	S12345XX	V	19990105	19990312	007

M	N	O	P	Q	R	S	T	U	V	W
MO00	64131	OK00	71222	10030	0400	056	12500	05500	SMITH-BATTSONXX	103777444

(2) International:

A	B	C	D	E	F	G	H	I	J	K	L
S	GSAA	GI	POV	RXPG8TY43	Q794–P912666XXX	19991012	PP123456	G	19990601	19990724	053

M	N	O	P	Q	R	S	T	U	V	W
MO00	64131	490J	XXXXX	00000	0000	165	15500	15500	SMITH-BATTSONXX	103777444

[FR Doc. C2–20127 Filed 8–29–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Preliminary Measure Set for the National Healthcare Quality Report; Request for Comments

Correction

In notice document 02–20920, beginning on page 53801, in the issue of August 19, 2002, make the following corrections:

1. On page 53801, in the third column, under the heading **Comments Deadline**, in the last line, the e-mail address ''*ekelley@ahrg.gov*'' should read ''*ekelley@ahrq.gov*''.

2. On the same page, in the same column, under the heading **Availability of Preliminary Measure Set**, in the third and fourth lines, the Web site ''*http://www.ahrg.gov/qual/measurix.htm*'' should read ''*http://www.ahrq.gov/qual/measurix.htm*''.

[FR Doc. C2–20920 Filed 8–29–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MTM 91636]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; MT

Correction

In notice document 02–21393 appearing on page 54462 in the issue of Thursday, August 22, 2002, the docket number should read as set forth above.

[FR Doc. C2–21393 Filed 8–29–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02-ACE-8]

Proposed Establishment of Class E2 and Class E4 Airspace and Modification of Existing Class E5 Airspace; Ainsworth, NE

Correction

In proposed rule document 02–21576 beginning on page 54599 in the issue of Friday, August 23, 2002, make the following correction:

On page 54601, in the first column, in the heading ''**ACE NE 35 AINSWORTH, NE [REVISED]**'', ''35'' should read ''E5''.

[FR Doc. C2–21576 Filed 8–29–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
August 30, 2002

Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–35]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Barbara Jenkins, Air Force Real Estate Agency, (Area-MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; COE: Ms. Shirley Middleswarth, Army Corps of Engineers, Management & Disposal Division, 441 G Street, Washington, DC 20314–1000; (202) 761–7425; DOT: Mr. Rugene Spruill, Principal, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW, Room 2310, Washington, DC 20590; (202) 366–4246; ENERGY: Mr. Tom Knox, Department of Energy, Office of Engineering & Construction Management, CR–80, Washington, DC 20585; (202) 586–8715; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; INTERIOR: Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW, MS5512, Washington, DC 20240; (202) 219–0728; NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; VA: Ms. Amelia E. McLellan, Director, Real Property Service (183C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 419, Washington, DC 20420; (202) 565–5941; (These are not toll-free numbers).

Dated: August 22, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 8/30/02

Suitable/Available Properties

Buildings (by State)

Alaska

Bldg. 6165
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200230007
Status: Unutilized
Comment: 15970 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 6173
Elmendorf AFB
Elmendorf Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200230008
Status: Unutilized
Comment: 16290 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 7525
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200230009
Status: Unutilized

Comment: 26,226 sq. ft., need rehab, possible asbestos/lead paint, most recent use—dormitory, off-site use only

Bldg. A110
ISC Kodiak
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200210016
Status: Excess
Comment: 1316 sq. ft., presence of asbestos/lead paint, most recent use—retail/commercial

Arkansas

Post Antenna Tower Site
1.5 west of USHwy 165
Gillette Co: AR 72055–
Landholding Agency: GSA
Property Number: 54200230008
Status: Surplus
Comment: radio repeater tower, presence of asbestos/lead paint, on 2.06 acres
GSA Number: 7–D–AR–563

Joy Antenna Tower Site
Range 9 West
Searcy Co: White AR 72143–
Landholding Agency: GSA
Property Number: 54200230011
Status: Surplus
Comment: radio repeater tower, presence of asbestos/lead paint, subject to existing easements, on 1.75 acres
GSA Number: 7–D–AR–564

Connecticut

Bldg. 516
Naval Submarine Base
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77200230037
Status: Excess
Comment: 1450 sq. ft., needs rehab, possible asbestos, off-site use only

Idaho

Bldg. CF603
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200020004
Status: Excess
Comment: 15,005 sq ft. cinder block, presence of asbestos/lead paint, major rehab, off-site use only

CPP657, CPP669, CPP686
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200110001
Status: Excess
Comment: 8000 sq. ft., bldgs. connected, possible asbestos/lead paint, most recent use—offices, off-site use only

TAN 615
Idaho Natl Eng. & Env. Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200210008
Status: Excess
Comment: 4214 sq. ft. maintenance bldg., presence of asbestos, proper liability insurance required, off-site use only

Bldg. CF617
Idaho Natl. Eng. & Env. Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200220022
Status: Excess
Comment: 11484 sq. ft. concrete, needs major rehab, presence of lead paint, off-site use only

Indiana

Bldg. 105, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230006
Status: Excess
Comment: 310 sq. ft., 1 story stone structure, no sanitary or heating facilities, Natl Register of Historic Places

Bldg. 140, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230007
Status: Excess
Comment: 60 sq. ft., concrete block bldg., most recent use—trash house

Bldg. 7
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810001
Status: Underutilized
Comment: 16,864 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 10
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810002
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 11
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810003
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 18
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810004
Status: Underutilized
Comment: 13,802 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 25
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810005
Status: Unutilized
Comment: 32,892 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Kentucky

Green River Lock & Dam #3
Rochester Co: Butler KY 42273–
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site
Landholding Agency: COE
Property Number: 31199010022
Status: Unutilized
Comment: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab

Massachusetts

Storage Bldg.
Knightville Dam Road
Huntington Co: Hampshire MA 01050–
Landholding Agency: COE
Property Number: 31200030005
Status: Unutilized
Comment: 480 sq. ft., needs rehab, off-site use only

Mississippi

Quonset Bldg.
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220010
Status: Unutilized
Comment: 26,250 sq. ft., presence of asbestos/lead paint, most recent use—storage/office, off-site use only

Storage Bldg. #1
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220011
Status: Unutilized
Comment: 32,502 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Storage Bldg. #2
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220012
Status: Unutilized
Comment: 16,170 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Yellow Office Bldg.
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220013
Status: Unutilized
Comment: 1820 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Storage Bldg.
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220014
Status: Unutilized
Comment: 1820 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Container Bldg.
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220015
Status: Unutilized
Comment: 270 sq. ft. presence of lead paint, most recent use—storage, off-site use only

Missouri

Bldgs. 90A/B, 91A/B, 92A/B
Jefferson Barracks Housing
St. Louis Co: MO 63125–
Landholding Agency: Air Force
Property Number: 18200220002
Status: Excess
Comment: 6450 sq. ft., needs repair, includes 2 acres

Montana

Bldg. 1
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040010
Status: Unutilized
Comment: 22799 sq. ft., presence of asbestos, most recent use—cold storage, off-site use only

Bldg. 2
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040011
Status: Unutilized
Comment: 3292 sq. ft., most recent use—cold storage, off-site use only

Bldg. 3
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040012
Status: Unutilized
Comment: 964 sq. ft., most recent use—cold storage, off-site use only

Bldg. 4
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040013
Status: Unutilized
Comment: 72 sq. ft., most recent use—cold storage, off-site use only

Bldg. 5
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040014
Status: Unutilized
Comment: 1286 sq. ft., most recent use—cold storage, off-site use only

New York

Lockport Comm. Facility
Shawnee Road
Lockport Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200040004
Status: Excess
Comment: 2 concrete block bldgs., (415 & 2929 sq. ft.) on 7.68 acres

Social Sec. Admin. Bldg.
517 N. Barry St.
Olean Co: NY 10278–0004
Landholding Agency: GSA
Property Number: 54200230009
Status: Excess
Comment: 9174 sq. ft., poor condition, most recent use—office
GSA Number: 1–G–NY–0895

North Dakota

Office Bldg.
Lake Oahe Project
3rd & Main
Ft. Yates Co: Sioux ND 58538–
Landholding Agency: COE
Property Number: 31200020001
Status: Unutilized
Comment: 1200 sq. ft., 2-story wood, off-site use only

Ohio

Barker Historic House
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Location: Located at lock site, downstream of lock and dam structure
Landholding Agency: COE
Property Number: 31199120018
Status: Unutilized
Comment: 1600 sq. ft. bldg. with ½ acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only

Residence
506 Reservoir Rd.
Paint Creek Lake
Bainbridge Co: Highland OH 45612–
Landholding Agency: COE
Property Number: 31200210008
Status: Unutilized
Comment: 1200 sq. ft., needs repair, off-site use only

Residence
4969 Dillon Dam Road
Dillon Lake
Zanesville Co: OH 43701–
Landholding Agency: COE
Property Number: 31200210009
Status: Unutilized
Comment: 1800 sq. ft., off-site use only

Pennsylvania

Mahoning Creek Reservoir
New Bethlehem Co: Armstrong PA 16242–
Landholding Agency: COE
Property Number: 31199210008
Status: Unutilized
Comment: 1015 sq. ft., 2 story brick residence, off-site use only

Dwelling
Lock & Dam 6, Allegheny River, 1260 River Rd.
Freeport Co: Armstrong PA 16229–2023
Landholding Agency: COE
Property Number: 31199620008
Status: Unutilized
Comment: 2652 sq. ft., 3-story brick house, in close proximity to Lock and Dam, available for interim use for nonresidential purposes

Govt. Dwelling
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Landholding Agency: COE
Property Number: 31199640002
Status: Unutilized
Comment: 1421 sq. ft., 2-story brick w/ basement, most recent use—residential

Dwelling
Lock & Dam 4, Allegheny River
Natrona Co: Allegheny PA 15065–2609
Landholding Agency: COE
Property Number: 31199710009
Status: Unutilized
Comment: 1664 sq. ft., 2-story brick residence, needs repair, off-site use only

Dwelling #1
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Landholding Agency: COE
Property Number: 31199740002
Status: Excess
Comment: 2030 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Landholding Agency: COE
Property Number: 31199740003
Status: Excess
Comment: 3045 sq. ft., most recent use—residential, good condition, off-site use only

Govt Dwelling
East Branch Lake
Wilcox Co: Elk PA 15870–9709
Landholding Agency: COE
Property Number: 31199740005
Status: Underutilized
Comment: approx. 5299 sq. ft., 1-story, most recent use—residence, off-site use only

Dwelling #1
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Landholding Agency: COE
Property Number: 31199740006
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Landholding Agency: COE
Property Number: 31199740007
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #1
Woodcock Creek Lake
Saegertown Co: Crawford PA 16433–0629
Landholding Agency: COE
Property Number: 31199740008
Status: Excess
Comment: 2106 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Lock & Dam 6, 1260 River Road
Freeport Co: Armstrong PA 16229–2023
Landholding Agency: COE
Property Number: 31199740009
Status: Excess
Comment: 2652 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Landholding Agency: COE
Property Number: 31199830003
Status: Excess
Comment: 1421 sq. ft., 2-story + basement, most recent use—residential

Residence/Office
Cowanesque Lake Project
Lawrenceville Co: Tioga PA 16929–
Landholding Agency: COE
Property Number: 31199940002
Status: Unutilized
Comment: 1653 sq. ft. residence, and 2,640 sq. ft. storage bldg., need major repairs, no operating sanitary facilities

Bldg. 3, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Landholding Agency: VA
Property Number: 97199230012
Status: Underutilized
Comment: portion of bldg. (4046 sq. ft.), most recent use—storage, second floor—lacks elevator access

South Dakota

West Communications Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199340051
Status: Unutilized
Comment: 2 bldgs. on 2.37 acres, remote area, lacks infrastructure, road hazardous during winter storms, most recent use—industrial storage

Tennessee

Batten Tract 01–198
Stones River Natl Battlefield
Murfreesboro Co: Rutherford TN 37129–
Landholding Agency: Interior
Property Number: 61200220012
Status: Excess
Comment: 1152 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

Bell Tract 01–189
Stones River Natl Battlefield
Old Nashville Hwy
Murfreesboro Co: Rutherford TN 37129–
Landholding Agency: Interior
Property Number: 61200220013
Status: Excess
Comment: 1755 sq. ft., most recent use—residential, off-site use only

Simons Tract 01–197
Stones River Natl Battlefield
Nickens Lane
Murfreesboro Co: Rutherford TN 37129–
Landholding Agency: Interior
Property Number: 61200220014
Status: Excess
Comment: 1375 sq. ft., needs extensive repairs, presence of asbestos/lead paint, most recent use—residential, off-site use only

Virginia

Metal Bldg.
John H. Kerr Dam & Reservoir
Co: Boydton VA
Landholding Agency: COE
Property Number: 31199620009
Status: Excess
Comment: 800 sq. ft., most recent use—storage, off-site use only

Wisconsin

Former Lockmaster's Dwelling
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 31199011524
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access

Former Lockmaster's Dwelling
Appleton 4th Lock
905 South Lowe Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 31199011525
Status: Unutilized
Comment: 908 sq. ft.; 2 story wood frame residence; needs rehab

Former Lockmaster's Dwelling
Kaukauna 1st Lock
301 Canal Street
Kaukauna Co: Outagamie WI 54131–
Landholding Agency: COE
Property Number: 31199011527
Status: Unutilized
Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab; secured area with alternate access

Former Lockmaster's Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 31199011531
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access

Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie WI 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road
Landholding Agency: COE
Property Number: 31199011533
Status: Unutilized
Comment: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab

Former Lockmaster's Dwelling
Little KauKauna Lock
Little KauKauna
Lawrence Co: Brown WI 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway ''D'') and River Street
Landholding Agency: COE
Property Number: 31199011535
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab

Former Lockmaster's Dwelling
Little Chute, 2nd Lock
214 Mill Street
Little Chute Co: Outagamie WI 54140—
Landholding Agency: COE
Property Number: 31199011536
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access

Bldg. 8
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 97199010056
Status: Underutilized
Comment: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab

Land (by State)

Alabama

VA Medical Center
VAMC
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 97199010053
Status: Underutilized
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped

Arkansas

Parcel 01
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010071
Status: Unutilized
Comment: 77.6 acres

Parcel 02
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010072
Status: Unutilized
Comment: 198.5 acres

Parcel 03
DeGray Lake
Section 18
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010073
Status: Unutilized
Comment: 50.46 acres

Parcel 04
DeGray Lake
Section 24, 25, 30 and 31
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010074
Status: Unutilized
Comment: 236.37 acres

Parcel 05
DeGray Lake
Section 16
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010075
Status: Unutilized
Comment: 187.30 acres

Parcel 06
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010076
Status: Unutilized
Comment: 13.0 acres

Parcel 07
DeGray Lake
Section 34
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 31199010077
Status: Unutilized
Comment: 0.27 acres

Parcel 08
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010078
Status: Unutilized
Comment: 14.6 acres

Parcel 09
DeGray Lake
Section 12

Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 31199010079
Status: Unutilized
Comment: 6.60 acres

Parcel 10
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 31199010080
Status: Unutilized
Comment: 4.5 acres

Parcel 11
DeGray Lake
Section 19
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 31199010081
Status: Unutilized
Comment: 19.50 acres

Lake Greeson
Section 7, 8 and 18
Murfreesboro Co: Pike AR 71958–9720
Landholding Agency: COE
Property Number: 31199010083
Status: Unutilized
Comment: 46 acres

California

Land
4150 Clement Street
San Francisco Co: San Francisco CA 94121–
Landholding Agency: VA
Property Number: 97199240001
Status: Underutilized
Comment: 4 acres; landslide area

Florida

Homestead Communications Annex
Homestead Co: Dare FL 33033–
Landholding Agency: Air Force
Property Number: 18200210015
Status: Excess
Comment: 20 acres w/concrete bldg., consist of wetlands/100 year floodplain, most recent use—high frequency regional broadcasting system

Iowa

40.66 acres
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138–
Landholding Agency: VA
Property Number: 97199740002
Status: Unutilized
Comment: golf course, easement requirements

Kansas

Parcel 1
El Dorado Lake
Section 13, 24, and 18
(See County) Co: Butler KS
Landholding Agency: COE
Property Number: 31199010064
Status: Unutilized
Comment: 61 acres; most recent use—recreation

Kentucky

Tract 2625
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: Adjoining the village of Rockcastle
Landholding Agency: COE
Property Number: 31199010025
Status: Excess
Comment: 2.57 acres; rolling and wooded

Tract 2709–10 and 2710–2
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle
Landholding Agency: COE
Property Number: 31199010026
Status: Excess
Comment: 2.00 acres; steep and wooded

Tract 2708–1 and 2709–1
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle
Landholding Agency: COE
Property Number: 31199010027
Status: Excess
Comment: 3.59 acres; rolling and wooded; no utilities

Tract 2800
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 4½ miles in a southeasterly direction from the village of Rockcastle
Landholding Agency: COE
Property Number: 31199010028
Status: Excess
Comment: 5.44 acres; steep and wooded

Tract 2915
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 6½ miles west of Cadiz
Landholding Agency: COE
Property Number: 31199010029
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities

Tract 2702
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle
Landholding Agency: COE
Property Number: 31199010031
Status: Excess
Comment: 4.90 acres; wooded; no utilities

Tract 4318
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: Trigg Co. adjoining the city of Canton, KY. on the waters of Hopson Creek
Landholding Agency: COE
Property Number: 31199010032
Status: Excess
Comment: 8.24 acres; steep and wooded

Tract 4502
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 3½ miles in a southerly direction from Canton, KY
Landholding Agency: COE
Property Number: 31199010033
Status: Excess
Comment: 4.26 acres; steep and wooded

Tract 4611
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 5 miles south of Canton, KY
Landholding Agency: COE
Property Number: 31199010034
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities

Tract 4619
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY
Landholding Agency: COE
Property Number: 31199010035
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities

Tract 4817
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 6½ miles south of Canton, KY
Landholding Agency: COE
Property Number: 31199010036
Status: Excess
Comment: 1.75 acres; wooded

Tract 1217
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: On the north side of the Illinois Central Railroad
Landholding Agency: COE
Property Number: 31199010042
Status: Excess
Comment: 5.80 acres; steep and wooded

Tract 1906
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4 miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010044
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities

Tract 1907
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010045
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities

Tract 2001 #1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010046
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities

Tract 2001 #2
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010047
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities

Tract 2005
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 5½ miles east of Eddyville, KY
Landholding Agency: COE

Property Number: 31199010048
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities

Tract 2307
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010049
Status: Excess
Comment: 11.43 acres; steep; rolling and wooded; no utilities

Tract 2403
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 7 miles southeasterly of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010050
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities

Tract 2504
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 9 miles southeasterly of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010051
Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities

Tract 214
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River
Landholding Agency: COE
Property Number: 31199010052
Status: Excess
Comment: 5.5 acres; wooded; no utilities

Tract 215
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 31199010053
Status: Excess
Comment: 1.40 acres; wooded; no utilities

Tract 241
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Landholding Agency: COE
Property Number: 31199010054
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities

Tracts 306, 311, 315 and 325
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 2.5 miles southwest of Kuttawa, KY, on the waters of Cypress Creek
Landholding Agency: COE
Property Number: 31199010055
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities

Tracts 2305, 2306, and 2400–1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 6½ miles southeasterly of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010056
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities

Tracts 5203 and 5204
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: Village of Linton, KY state highway 1254
Landholding Agency: COE
Property Number: 31199010058
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities

Tract 5240
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: 1 mile northwest of Linton, KY
Landholding Agency: COE
Property Number: 31199010059
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities

Tract 4628
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY
Landholding Agency: COE
Property Number: 31199011621
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements

Tract 4619–B
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY
Landholding Agency: COE
Property Number: 31199011622
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements

Tract 2403–B
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: 7 miles southeasterly from Eddyville, KY
Landholding Agency: COE
Property Number: 31199011623
Status: Unutilized
Comment: 0.70 acres, wooded; subject to utility easements

Tract 241–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Landholding Agency: COE
Property Number: 31199011624
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements

Tracts 212 and 237
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Landholding Agency: COE
Property Number: 31199011625
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements

Tract 215–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 31199011626
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements

Tract 233
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 31199011627
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements

Tract N–819
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601–
Landholding Agency: COE
Property Number: 31199140009
Status: Underutilized
Comment: 91 acres, most recent use—hunting, subject to existing easements

Portion of Lock & Dam No. 1
Kentucky River
Carrolton Co: Carroll KY 41008–0305
Landholding Agency: COE
Property Number: 31199320003
Status: Unutilized
Comment: approx. 3.5 acres (sloping), access monitored

Louisiana

Wallace Lake Dam and Reservoir
Shreveport Co: Caddo LA 71103–
Landholding Agency: COE
Property Number: 31199011009
Status: Unutilized
Comment: 10.81 acres; wildlife/forestry; no utilities

Bayou Bodcau Dam and Reservoir
Haughton Co: Caddo LA 71037–9707
Location: 35 miles Northeast of Shreveport, La
Landholding Agency: COE
Property Number: 31199011010
Status: Unutilized
Comment: 203 acres; wildlife/forestry; no utilities

Maryland

VA Medical Center 9600 North Point Road
Fort Howard Co: Baltimore MD 21052–
Landholding Agency: VA
Property Number: 97199010020
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—dump site for leaves

Mississippi

Parcel 7
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011019
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease—expires 1994

Parcel 8

Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011020
Status: Underutilized
Comment: 30 acres; no utilities; intermittently used under lease—expires 1994

Parcel 9
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011021
Status: Underutilized
Comment: 23 acres; no utilities; intermittently used under lease—expires 1994

Parcel 10
Grenada Lake
Sections 16, 17, 18 T24N R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 31199011022
Status: Underutilized
Comment: 490 acres; no utilities; intermittently used under lease—expires 1994

Parcel 2
Grenada Lake
Section 20 and T23N, R5E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 31199011023
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management

Parcel 3
Grenada Lake
Section 4, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011024
Status: Underutilized
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management; (13.5 acres/agriculture lease)

Parcel 4
Grenada Lake
Section 2 and 3. T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011025
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management

Parcel 5
Grenada Lake
Section 7, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011026
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease)

Parcel 6
Grenada Lake
Section 9, T24N, R6E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 31199011027
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management

Parcel 11
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 31199011028
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management

Parcel 12
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha MS 38390–10903
Landholding Agency: COE
Property Number: 31199011029
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management

Parcel 13
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 31199011030
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease)

Parcel 14
Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011031
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management

Parcel 15
Grenada Lake
Section 4, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011032
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management

Parcel 16
Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011033
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management

Parcel 17
Grenada Lake
Section 17, T23N, R7E
Grenada Co: Grenada MS 28901–0903
Landholding Agency: COE
Property Number: 31199011034
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management

Parcel 18
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Grenada MS 28902–0903
Landholding Agency: COE
Property Number: 31199011035
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management

Parcel 19
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 31199011036
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management

Missouri

Harry S Truman Dam & Reservoir
Warsaw Co: Benton MO 65355–
Location: Triangular shaped parcel southwest of access road ''B'', part of Bledsoe Ferry Park Tract 150
Landholding Agency: COE
Property Number: 31199030014
Status: Underutilized
Comment: 1.7 acres; potential utilities

Nebraska

Hastings Radar Bomb Scoring
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199810027
Status: Unutilized
Comment: 11 acres

Oklahoma

Pine Creek Lake
Section 27
(See County) Co: McCurtain OK
Landholding Agency: COE
Property Number: 31199010923
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3

Pennsylvania

Mahoning Creek Lake
New Bethlehem Co: Armstrong PA 16242–9603
Location: Route 28 north to Belknap, Road #4
Landholding Agency: COE
Property Number: 31199010018
Status: Excess
Comment: 2.58 acres; steep and densely wooded

Tracts 610, 611, 612
Shenango River Lake
Sharpsville Co: Mercer PA 16150–
Location: I–79 North, I–80 West, Exit Sharon; R18 North 4 miles, left on R518, right on Mercer Avenue
Landholding Agency: COE
Property Number: 31199011001
Status: Excess
Comment: 24.09 acres; subject to flowage easement

Tracts L24, L26
Crooked Creek Lake
Co: Armstrong PA 03051–
Location: Left bank—55 miles downstream of dam
Landholding Agency: COE
Property Number: 31199011011
Status: Unutilized
Comment: 7.59 acres; potential for utilities

Portion of Tract L–21A
Crooked Creek Lake, LR 03051
Ford City Co: Armstrong PA 16226–
Landholding Agency: COE
Property Number: 31199430012
Status: Unutilized

Comment: Approximately 1.72 acres of undeveloped land, subject to gas rights
Portion of Tract 119
State Rt 969
Curwensville Co: Clearfield PA 16833–
Landholding Agency: COE
Property Number: 31200010005
Status: Unutilized
Comment: approx. 17 acres, hilly wooded terrain

South Dakota

S. Nike Ed. Annex Land
Ellsworth AFB
Pennington Co: SD 57706–
Landholding Agency: Air Force
Property Number: 18200220010
Status: Unutilized
Comment: 7 acres w/five foundations from demolished bldgs. remain on site; with a road and a parking lot

Tennessee

Tract 6827
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles west of Dover, TN
Landholding Agency: COE
Property Number: 31199010927
Status: Excess
Comment: .57 acres; subject to existing easements

Tracts 6002–2 and 6010
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3½ miles south of village of Tabaccoport
Landholding Agency: COE
Property Number: 31199010928
Status: Excess
Comment: 100.86 acres; subject to existing easements

Tract 11516
Barkley Lake
Ashland City Co: Dickson TN 37015–
Location: ½ mile downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 31199010929
Status: Excess
Comment: 26.25 acres; subject to existing easements

Tract 2319
J. Percy Priest Dam and Resorvoir
Murfreesboro Co: Rutherford TN 37130–
Location: West of Buckeye Bottom Road
Landholding Agency: COE
Property Number: 31199010930
Status: Excess
Comment: 14.48 acres; subject to existing easements

Tract 2227
J. Percy Priest Dam and Resorvoir
Murfreesboro Co: Rutherford TN 37130–
Location: Old Jefferson Pike
Landholding Agency: COE
Property Number: 31199010931
Status: Excess
Comment: 2.27 acres; subject to existing easements

Tract 2107
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Across Fall Creek near Fall Creek camping area
Landholding Agency: COE
Property Number: 31199010932
Status: Excess
Comment: 14.85 acres; subject to existing easements

Tracts 2601, 2602, 2603, 2604
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 56
Landholding Agency: COE
Property Number: 31199010933
Status: Unutilized
Comment: 11 acres; subject to existing easements

Tract 1911
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: East of Lamar Road
Landholding Agency: COE
Property Number: 31199010934
Status: Excess
Comment: 6.92 acres; subject to existing easements

Tract 2321
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: South of Old Jefferson Pike
Landholding Agency: COE
Property Number: 31199010935
Status: Excess
Comment: 12 acres; subject to existing easements

Tract 7206
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles SE of Dover, TN
Landholding Agency: COE
Property Number: 31199010936
Status: Excess
Comment: 10.15 acres; subject to existing easements

Tracts 8813, 8814
Barkley Lake
Cumberland Co: Stewart TN 37050–
Location: 1½ miles East of Cumberland City
Landholding Agency: COE
Property Number: 31199010937
Status: Excess
Comment: 96 acres; subject to existing easements

Tract 8911
Barkley Lake
Cumberland City Co: Montgomery TN 37050–
Location: 4 miles east of Cumberland City
Landholding Agency: COE
Property Number: 31199010938
Status: Excess
Comment: 7.7 acres; subject to existing easements

Tract 11503
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2 miles downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 31199010939
Status: Excess
Comment: 1.1 acres; subject to existing easements

Tracts 11523, 11524
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2½ miles downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 31199010940
Status: Excess
Comment: 19.5 acres; subject to existing easements

Tract 6410
Barkley Lake
Bumpus Mills Co: Stewart TN 37028–
Location: 4½ miles SW. of Bumpus Mills
Landholding Agency: COE
Property Number: 31199010941
Status: Excess
Comment: 17 acres; subject to existing easements

Tract 9707
Barkley Lake
Palmyer Co: Montgomery TN 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Landholding Agency: COE
Property Number: 31199010943
Status: Excess
Comment: 6.6 acres; subject to existing easements

Tract 6949
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 1½ miles SE of Dover, TN
Landholding Agency: COE
Property Number: 31199010944
Status: Excess
Comment: 29.67 acres; subject to existing easements

Tracts 6005 and 6017
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3 miles south of Village of Tobaccoport
Landholding Agency: COE
Property Number: 31199011173
Status: Excess
Comment: 5 acres; subject to existing easements

Tracts K–1191, K–1135
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074–
Landholding Agency: COE
Property Number: 31199130007
Status: Underutilized
Comment: 54 acres, (portion in floodway), most recent use—recreation

Tract A–102
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 31199140006
Status: Underutilized
Comment: 351 acres, most recent use—hunting, subject to existing easements

Tract A–120
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 31199140007
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements

Tract D–185
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38570–
Landholding Agency: COE

Property Number: 31199140010
Status: Underutilized
Comment: 97 acres, most recent use—hunting, subject to existing easements

Texas

Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 97199010079
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities

Wisconsin

VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 97199010054
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities

Suitable/Unavailable Properties

Buildings (by State)

California

Santa Fe Flood Control Basin
Irwindale Co: Los Angeles CA 91706–
Landholding Agency: COE
Property Number: 31199011298
Status: Unutilized
Comment: 1400 sq. ft.; 1 story stucco; needs rehab; termite damage; secured area with alternate access

Idaho

Bldg. 224
Mountain Home Air Force
Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18199840008
Status: Unutilized
Comment: 1890 sq. ft., no plumbing facilities, possible asbestos/lead paint, most recent use—office

Bldg. CFA–613
Central Facilities Area
Idaho National Engineering Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199630001
Status: Unutilized
Comment: 1219 sq. ft., most recent use—sleeping quarters, presence of asbestos, off-site use only

Illinois

Bldg. 7
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010001
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence

Bldg. 6
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010002
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 5
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010003
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 4
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010004
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 3
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010005
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame

Bldg. 2
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010006
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 1
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010007
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Iowa

Bldg. 00669
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 18199310002
Status: Unutilized
Comment: 1113 sq. ft., 1-story concrete block bldg., contamination clean-up in process

Montana

VA MT Healthcare 210 S. Winchester
Miles City Co: Custer MT 59301–
Landholding Agency: VA
Property Number: 97200030001
Status: Underutilized
Comment: 18 buildings, total sq. ft. = 123,851, presence of asbestos, most recent use—clinic/office/food production

New York

Bldg. 1225
Verona Text Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220014
Status: Unutilized
Comment: 3865 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1226
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220015
Status: Unutilized
Comment: 7500 sq. ft., most recent use—storage

Bldg. 1227
Verona Text Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220016
Status: Unutilized
Comment: 1152 sq. ft., presence of asbestos/lead paint, most recent use—power station

Bldg. 1231
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220017
Status: Unutilized
Comment: 3865 sq. ft., presence of asbestos/lead paint/volatile organic compounds, access requirements, most recent use—research lab

Bldg. 1233
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220018
Status: Unutilized
Comment: 1152 sq. ft., needs repair, presence of asbestos/lead paint/volatile organic compounds, access requirements, most recent use—power station

Bldgs. 1235, 1239
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220019
Status: Unutilized
Comment: 144/825 sq. ft., need repairs, presence of lead paint, most recent use—electric switch station

Bldg. 1241
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220020
Status: Unutilized
Comment: 159 sq. ft., presence of lead paint, most recent use—sewage pump station

Bldg. 1243
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220021
Status: Unutilized
Comment: 25 sq. ft., most recent use—waste treatment

Bldg. 1245
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220022

Status: Unutilized
Comment: 3835 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1247
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220023
Status: Unutilized
Comment: 576 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—power station

Bldg. 1250 + land
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220024
Status: Unutilized
Comment: 11,766 sq. ft. offices/lab with 495 acres, presence of asbestos/lead paint/wetlands

Bldg. 1253
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220025
Status: Unutilized
Comment: 3835 sq. ft., needs repair, presence of asbestos/lead paint/volatile organic compounds, access requirements, most recent use—research lab

Bldg. 1255
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220026
Status: Unutilized
Comment: 576 sq. ft., needs repair, presence of lead paint/volatile organic compounds, access requirement, most recent use—power station

Bldg. 1261
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220027
Status: Unutilized
Comment: 3835 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1263
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220028
Status: Unutilized
Comment: 576 sq. ft. needs repair, presence of lead paint, most recent use—power station

Bldgs. 1266, 1269
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220029
Status: Unutilized
Comment: 3730/3865 sq. ft., need repairs, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1271
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220030
Status: Unutilized
Comment: 1152 sq. ft., needs repair, presence of lead paint, most recent use—power station

Bldg. 1273
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220031
Status: Unutilized
Comment: 87 sq. ft., presence of asbestos, most recent use—sewage pump station

Bldg. 1277
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220032
Status: Unutilized
Comment: 3865 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1279
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220033
Status: Unutilized
Comment: 1152 sq. ft., needs repair, presence of lead paint, most recent use—power station

Bldg. 1285
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220034
Status: Unutilized
Comment: 4690 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1287
Verona Test Annex
Verona Co: Oneida NY 13478
Landholding Agency: Air Force
Property Number: 18200220035
Status: Unutilized
Comment: 1152 sq. ft., needs repair, presence of lead paint, most recent use—power station

Ohio

Bldg.—Berlin Lake
7400 Bedell Road
Berlin Center Co: Mahoning OH 44401–9797
Landholding Agency: COE
Property Number: 31199640001
Status: Unutilized
Comment: 1420 sq. ft., 2-story brick w/garage and basement, most recent use—residential, secured w/alternate access

Pennsylvania

Tract 353
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430019
Status: Unutilized
Comment: 812 sq. ft., 2-story, log structure, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site

Tract 403A
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338
Landholding Agency: COE
Property Number: 31199430021
Status: Unutilized
Comment: 620 sq. ft., 2-story, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site.

Tract 403B
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430022
Status: Unutilized
Comment: 1600 sq. ft., 2-story, brick structure, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site.

Tract 403C
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430023
Status: Unutilized
Comment: 672 sq. ft., 2-story carriage house/stable barn type structure, needs repair, most recent use—storage/garage, if used for habitation must be flood proofed or removed

Tract 434
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430024
Status: Unutilized
Comment: 1059 sq. ft., 2-story, wood frame, 2 apt. units, historic property, if used for habitation must be flood proofed or removed off-site

Tract No. 224
Grays Landing Lock & Dam Project
Greensboro Co: Green PA 15338–
Landholding Agency: COE
Property Number: 31199440001
Status: Unutilized
Comment: 1040 sq. ft., 2 story bldg., needs repair, historic struct., flowage easement, if habitation is desired property will be required to be flood proofed or removed off site

Wisconsin

Former Lockmaster's Dwelling
DePere Lock 100 James Street
De Pere Co: Brown WI 54115–
Landholding Agency: COE
Property Number: 31199011526
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access

Bldg. 2
VA Medical Center 5000 West National Ave.
Milwaukee WI 53295–
Landholding Agency: VA
Property Number: 97199830002
Status: Underutilized
Comment: 133,730 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage

Land (by State)

Illinois

Lake Shelbyville
Shelbyville Co: Shelby & Moultrie IL 62565–9804
Landholding Agency: COE
Property Number: 31199240004

Status: Unutilized
Comment: 5 parcels of land equalling 0.70 acres, improved w/4 small equipment storage bldgs. and a small access road, easement restrictions.

Iowa

38 acres
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138–
Landholding Agency: VA
Property Number: 97199740001
Status: Unutilized
Comment: golf course

Michigan

VA Medical Center
5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016–
Landholding Agency: VA
Property Number: 97199010015
Status: Underutilized
Comment: 20 acres, used as exercise trails and storage areas, potential utilities

New York

VA Medical Center
Fort Hill Avenue
Canandaigua Co: Ontario NY 14424–
Landholding Agency: VA
Property Number: 97199010017
Status: Underutilized
Comment: 27.5 acres, used for school ballfield and parking, existing utilities easements, portion leased.

Pennsylvania

East Branch Clarion River Lake
Wilcox Co: Elk PA
Location: Free camping area on the right bank off entrance roadway
Landholding Agency: COE
Property Number: 31199011012
Status: Underutilized
Comment: 1 acre; most recent use—free campground

Dashields Locks and Dam
(Glenwillard, PA)
Crescent Twp. Co: Allegheny PA 15046–0475
Landholding Agency: COE
Property Number: 31199210009
Status: Unutilized
Comment: 0.58 acres, most recent use—baseball field

VA Medical Center
New Castle Road
Butler Co: Butler PA 16001–
Landholding Agency: VA
Property Number: 97199010016
Status: Underutilized
Comment: Approx. 9.29 acres, used for patient recreation, potential utilities

Land No. 645
VA. Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206–
Location: Between Campania and Wiltsie Streets
Landholding Agency: VA
Property Number: 97199010080
Status: Unutilized
Comment: 90.3 acres, heavily wooded, property includes dump area and numerous site storm drain outfalls

Land—34.16 acres
VA Medical Center
1400 Black Horse Hill Road
Coatesville Co: Chester PA 19320–
Landholding Agency: VA
Property Number: 97199340001
Status: Underutilized
Comment: 34.16 acres, open field, most recent use—recreation/buffer

Suitable/To Be Excessed

Buildings (by State)

Massachusetts

Cuttyhunk Boathouse
South Shore of Cuttyhunk Pond
Gosnold Co: Dukes MA 02713–
Landholding Agency: DOT
Property Number: 87199310001
Status: Unutilized
Comment: 2700 sq. ft., wood frame, one story, needs rehab, limited utilities, off-site use only

Nauset Beach Light
Nauset Beach Co: Barnstable MA
Landholding Agency: DOT
Property Number: 87199420001
Status: Unutilized
Comment: 48 foot tower, cylindrical cast iron, most recent use—aid to navigation

Light Tower, Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 87199430005
Status: Excess
Comment: 66 ft. tower, 14″9′ diameter, brick structure, scheduled to be vacated 9/94

Keepers Dwelling
Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 87199430006
Status: Excess
Comment: 1160 sq. ft., 2-story wood frame, attached to light tower, scheduled to be vacated 9/94

Duplex Housing Unit
Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 87199430007
Status: Excess
Comment: 2 living units, 930 sq. ft. each, 1-story each, located on eroding ocean bluff, scheduled to be vacated 9/94

Nahant Towers
Nahant Co: Essex MA
Landholding Agency: DOT
Property Number: 87199530001
Status: Unutilized
Comment: 196 sq. ft., 8-story observation tower

New York

Bldg. 1
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530048
Status: Excess
Comment: 4955 sq. ft., 2 story concrete block, needs rehab, most recent use—administration

Bldg. 2
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530049
Status: Excess
Comment: 1476 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop

Bldg. 6
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530050
Status: Excess
Comment: 2466 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop

Bldg. 11
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530051
Status: Excess
Comment: 1750 sq. ft., 1 story wood frame, needs rehab, most recent use—storage

Bldg. 8
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530052
Status: Excess
Comment: 1812 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop communications

Bldg. 14
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530053
Status: Excess
Comment: 156 sq. ft., 1 story wood frame, most recent use—vehicle fuel station

Bldg. 30
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530054
Status: Excess
Comment: 3649 sq. ft., 1 story, needs rehab, most recent use—assembly hall

Bldg. 31
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530055
Status: Excess
Comment: 8252 sq. ft., 1 story concrete block, most recent use—storage

Bldg. 32
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530056
Status: Excess
Comment: 1627 sq. ft., 1 story concrete block, most recent use—storage

South Carolina

5 Bldgs.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 101 Vector Ave., 112, 114, 116, 118 Intercept Ave.
Landholding Agency: Air Force
Property Number: 18199830035
Status: Unutilized

Comment: 1433 sq. ft. + 345 sq. ft. carport, lead base paint/exterior most recent use—residential

1 Bldg.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 102 Vector Ave.
Landholding Agency: Air Force
Property Number: 18199830036
Status: Unutilized
Comment: 1545 sq. ft. + 345 sq. ft. carport, lead base paint/exterior most recent use—residential

1 Bldg.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 103 Vector Ave.
Landholding Agency: Air Force
Property Number: 18199830037
Status: Unutilized
Comment: 1445 sq. ft. + 346 sq. ft. carport, lead base paint/exterior most recent use—residential

18 Bldgs.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 104–107 Vector Ave., 108–111, 113, 115, 117, 119 Intercept Ave., 120–122 Radar Ave.
Landholding Agency: Air Force
Property Number: 18199830038
Status: Unutilized
Comment: 1265 sq. ft. + 353 sq. ft. carport, lead base paint/exterior most recent use—residential

Land (by State)

Alaska

Gibson Cove Tract
Kodiak Co: AK 99619–
Landholding Agency: DOT
Property Number: 87199920001
Status: Unutilized
Comment: 37.55 acres, undeveloped land

Georgia

Lake Sidney Lanier
Co: Forsyth GA 30130–
Location: Located on Two Mile Creek adj. to State Route 369
Landholding Agency: COE
Property Number: 31199440010
Status: Unutilized
Comment: 0.25 acres, endangered plant species

Lake Sidney Lanier—3 parcels
Gainesville Co: Hall GA 30503–
Location: Between Gainesville H.S. and State Route 53 By-Pass
Landholding Agency: COE
Property Number: 31199440011
Status: Unutilized
Comment: 3 parcels totalling 5.17 acres, most recent use—buffer zone, endangered plant species

Kansas

Parcel #1
Fall River Lake
Section 26
Co: Greenwood KS
Landholding Agency: COE
Property Number: 31199010065
Status: Unutilized
Comment: 126.69 acres; most recent use—recreation and leased cottage sites

Parcel No. 2, El Dorado Lake
Approx. 1 mi east of the town of El Dorado
Co: Butler KS
Landholding Agency: COE
Property Number: 31199210005
Status: Unutilized
Comment: 11 acres, part of a relocated railroad bed, rural area

Massachusetts

Buffumville Dam
Flood Control Project
Gale Road
Carlton Co: Worcester MA 01540–0155
Location: Portion of tracts B–200, B–248, B–251, B–204, B–247, B–200 and B–256
Landholding Agency: COE
Property Number: 31199010016
Status: Excess
Comment: 1.45 acres

New York

14.90 Acres
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530057
Status: Excess
Comment: Fenced in compound, most recent use—Air Natl. Guard Communication & Electronics Group

Tennessee

Tract D–456
Cheatham Lock and Dam
Ashland Co: Cheatham TN 37015–
Location: Right downstream bank of Sycamore Creek
Landholding Agency: COE
Property Number: 31199010942
Status: Excess
Comment: 8.93 acres; subject to existing easements

Texas

Corpus Christi Ship Channel
Corpus Christi Co: Neuces TX
Location: East side of Carbon Plant Road, approx. 14 miles NW of downtown Corpus Christi
Landholding Agency: COE
Property Number: 31199240001
Status: Unutilized
Comment: 4.4 acres, most recent use—farm land

Unsuitable Properties

Buildings (by State)

Alabama

Dwelling A
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120001
Status: Excess
Reason: Floodway

Dwelling B
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120002
Status: Excess
Reason: Floodway

Oil House
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120003
Status: Excess
Reason: Floodway

Garage
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120004
Status: Excess
Reason: Floodway

Shop Building
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120005
Status: Excess
Reason: Floodway

Bldg. 7
VA Medical Center
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 97199730001
Status: Underutilized
Reason: Secured Area

Bldg. 8
VA Medical Center
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 97199730002
Status: Underutilized
Reason: Secured Area

Alaska

Bldg. 15532
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200220001
Status: Unutilized
Reasons: Within airport runway clear zone; Secured Area

Bldg. 18
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 87199210132
Status: Excess
Reasons: Within airport runway clear zone; Secured Area
GSA Number : U–ALAS–655A

Boathouse
Coast Guard Station Ketchikan
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200020001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 23
USCG Integrated Support Command
Kodiak Co: Kodiak Island AK 99619–
Landholding Agency: DOT
Property Number: 87200110009
Status: Excess
Reason: Extensive deterioration

Bldg. 25
USCG Integrated Support Command
Kodiak Co: Kodiak Island AK 99619–
Landholding Agency: DOT

Property Number: 87200110010
Status: Excess
Reason: Extensive deterioration

Bldg. 52
Integrated Support Command
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200110012
Status: Unutilized
Reason: Extensive deterioration

Barracks
LORAN Station
Sitkinak Island Co: AK
Landholding Agency: DOT
Property Number: 87200120007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

Incinerator Bldg.
LORAN Station
Sitkinak Island Co: AK
Landholding Agency: DOT
Property Number: 87200120008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

Signal/Power Bldg.
LORAN Station
Sitkinak Island Co: AK
Landholding Agency: DOT
Property Number: 87200120009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

Transmitter Bldg.
LORAN Station
Sitkinak Island Co: AK
Landholding Agency: DOT
Property Number: 87200120010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

Waste Water Treatment Bldg.
LORAN Station
Sitkinak Island Co: AK
Landholding Agency: DOT
Property Number: 87200120011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

Bldg. V001
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140001
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldgs. T003, T004
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140002
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. B001
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140003
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. B002
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140004
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. B003
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140005
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. B004
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140006
Status: Excess
Reason: Secured Area

Bldg. B006
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140007
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. B008
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140008
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. B009
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140009
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. B011
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140010
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. B012
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140011
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. B000
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140012
Status: Excess
Reason: Extensive deterioration

Bldgs. T03, T04, 002
Loran Station
Kodiak Co: Kodiak Island AK 99619–
Landholding Agency: DOT
Property Number: 87200210006
Status: Excess
Reason: Extensive deterioration

Longhouse
U.S. Coast Guard
Valdez Co: AK 99686–
Landholding Agency: DOT
Property Number: 87200220006
Status: Excess
Reason: Extensive deterioration

Arkansas

Dwelling
Bull Shoals Lake/Dry Run Road
Oakland Co: Marion AR 72661–
Landholding Agency: COE
Property Number: 31199820001
Status: Unutilized
Reason: Extensive deterioration

Helena Casting Plant
Helena Co: Phillips AR 72342–
Landholding Agency: COE
Property Number: 31200220001
Status: Unutilized
Reason: Extensive deterioration

California

Bldg. 30101
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210019
Status: Unutilized
Reason: Secured Area

Bldgs. 30131, 30709
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210020
Status: Unutilized
Reason: Secured Area

Bldgs. 30137, 30701
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210021
Status: Unutilized
Reason: Secured Area

Bldg. 30235
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210022
Status: Unutilized
Reason: Secured Area

Bldgs. 30238, 30446
Vandenberg AFB
Vandenberg Co: Santa Barbara CA
Landholding Agency: Air Force
Property Number: 18200210023
Status: Unutilized
Reason: Secured Area

Bldgs. 30239, 30444
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210024
Status: Unutilized
Reason: Secured Area

Bldgs. 30306, 30335, 30782

Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210025
Status: Unutilized
Reason: Secured Area

Bldgs. 30339, 30340, 30341
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210026
Status: Unutilized
Reason: Secured Area

Bldg. 30447
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210027
Status: Unutilized
Reason: Secured Area

Bldg. 30524
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210028
Status: Unutilized
Reason: Secured Area

Bldg. 30647
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210029
Status: Unutilized
Reason: Secured Area

Bldgs. 30710, 30717
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210030
Status: Unutilized
Reason: Secured Area

Bldgs. 30718, 30607
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210031
Status: Unutilized
Reason: Secured Area

Bldgs. 30722, 30735
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210032
Status: Unutilized
Reason: Secured Area

Bldgs. 30775, 30777
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210033
Status: Unutilized
Reason: Secured Area

Bldgs. 30830, 30837
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210034
Status: Unutilized
Reason: Secured Area

Bldgs. 30839, 30844, 30854
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210035
Status: Unutilized
Reason: Secured Area

Soil & Materials Testing Lab
Sausalito Co: CA 00000–
Landholding Agency: COE
Property Number: 31199920002
Status: Excess
Reason: contamination

Bldgs. M03, MO14, MO17
Sandia National Lab
Livermore Co: Alameda CA 94550–
Landholding Agency: Energy
Property Number: 41200220001
Status: Excess
Reason: Extensive deterioration

Bldg. 30147
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200230033
Status: Excess
Reason: Secured Area

Bldg. 30220
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200230034
Status: Excess
Reason: Secured Area

Bldg. 30891
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200230035
Status: Excess
Reason: Secured Area

Bldg. 30932
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200230036
Status: Excess
Reason: Secured Area

Bldgs. 18412, 18413, 18414
Marine Warfare Training Ctr
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200230040
Status: Excess
Reason: Extensive deterioration

10 Bldgs.
USCG Station Humboldt Bay
Samoa Co: Humboldt CA 95564–9999
Landholding Agency: DOT
Property Number: 87199440027
Status: Excess
Reason: Extensive deterioration
Comment: Land to be relinquished to BLM (Public Domain Land)

Bldg. 30
Coast Guard Group
One Yerba Buena Island
San Francisco Co: CA 94118–
Landholding Agency: DOT
Property Number: 87200210007
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 40
Coast Guard Group
One Yerba Buena Island
San Francisco Co: CA 94118–
Landholding Agency: DOT
Property Number: 87200210008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 75
Coast Guard Group
One Yerba Buena Island
San Francisco Co: CA 94118–
Landholding Agency: DOT
Property Number: 87200210009
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 270
Coast Guard Group
One Yerba Buena Island
San Francisco Co: CA 94118–
Landholding Agency: DOT
Property Number: 87200210010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 391
U.S. Coast Guard
Pacific Strike Team
Novato Co: Marin CA 94934–
Landholding Agency: DOT
Property Number: 87200220005
Status: Underutilized
Reason: Secured Area

Qtrs. D
USCG Pt. Conception
Light Station
Lompoc Co: CA
Landholding Agency: DOT
Property Number: 87200220008
Status: Unutilized
Reason: Extensive deterioration

Qtrs. A&B
USCG Pt. Arguello
LORAN Station
Lompoc Co: CA
Location: Vandenberg AFB
Landholding Agency: DOT
Property Number: 87200220009
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Garage
USCG Pt. Arguello
LORAN Station
Lompoc Co: CA
Location: Vandenberg AFB
Landholding Agency: DOT
Property Number: 87200220010
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Qtrs. C&D
USCG Pt. Arguello
LORAN Station
Lompoc Co: CA
Location: Vandenberg AFB
Landholding Agency: DOT
Property Number: 87200220011
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Transmitter Bldg.
USCG Pt. Arguello
LORAN Station
Lompoc Co: CA
Location: Vandenberg AFB
Landholding Agency: DOT
Property Number: 87200220012

Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Colorado

Bldg. 34
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199540001
Status: Underutilized
Reasons: Contamination; Secured Area

Bldg. 35
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199540002
Status: Underutilized
Reasons: Contamination; Secured Area

Bldg. 36
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199540003
Status: Underutilized
Reasons: Contamination; Secured Area

Bldg. 2
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199610039
Status: Unutilized
Reasons: Contamination; Secured Area

Bldg. 7
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199610040
Status: Unutilized
Reasons: Contamination; Secured Area

Bldg. 31–A
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199610041
Status: Unutilized
Reasons: Contamination; Secured Area

Bldg. 33
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199610042
Status: Unutilized
Reasons: Contamination; Secured Area

Bldg. 727
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 729
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910002
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 779
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 780
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 780A
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 780B
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 782
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 783
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 784(A–D)
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 785
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 786
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 787(A–D)
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 875
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910013
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 880
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910014
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 886
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910015
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 308A
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 788
Rocky Flats Env. Tech. site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910017
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 888
Rocky Flats Environmental Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 714 A/B
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930021
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 717
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930022
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 770
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930023
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 771
Rocky Flats Env. Tech. Site

Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930024
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 771B
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930025
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 771C
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930026
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 772–772A
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930027
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 773
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930028
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 774
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930029
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 776
Rocky Flats Environmental Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 777
Rocky Flats Environmental Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 778
Rocky Flats Environmental Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Structure 712–712A
Rocky Flats Environmental Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010004
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Structure 713–713A
Rocky Flats Environmental Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010005
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Structure 771 TUN
Rocky Flats Environmental Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010006
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Structure 776A–781
Rocky Flats Environmental Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010007
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 111, 111B
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200030001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 125
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200120001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 333
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200120002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 762
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200120003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 762A
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200120004
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 792
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200120005
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 792A
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200120006
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 124, 129
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 371, 374, 374A
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 376–378, 381
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220004
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 441–443, 452
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220005
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 557, 559
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220006
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 561, 562
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220007
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 564, 566/A, 569
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220008
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 662, 663
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220009
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 666, 681
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220010
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 701, 705–708
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220011
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 714, 715, 718
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220012
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 731, 732
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220013
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 750, 763–765
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220014
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 778, 790
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220015
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 850, 864–865
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220016
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 869, 879
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220017
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 881, 881F, 881H
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220018
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 883–885, 887
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220019
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 891
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220020
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 906, 991, 995
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220021
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Alemeda Facility
350 S. Santa Fe Drive
Denver Co: Denver CO 80223–
Landholding Agency: DOT
Property Number: 87199010014
Status: Unutilized
Reason: Other environmental
Comment: contamination

Connecticut

Hezekiah S. Ramsdell Farm
West Thompson Lake
North Grosvenordale Co: Windham CT 06255–9801
Landholding Agency: COE
Property Number: 31199740001
Status: Unutilized
Reasons: Floodway; Extensive deterioration

Bldgs. 25 and 26
Prospect Hill Road
Windsor Co: Hartford CT 06095–
Landholding Agency: Energy
Property Number: 41199440003
Status: Excess
Reason: Secured Area

9 Bldgs.
Knolls Atomic Power Lab, Windsor Site
Windsor Co: Hartford CT 06095–
Landholding Agency: Energy
Property Number: 41199540004
Status: Excess
Reason: Secured Area

Bldg. 8, Windsor Site
Knolls Atomic Power Lab
Windsor Co: Hartford CT 06095–
Landholding Agency: Energy
Property Number: 41199830006
Status: Unutilized
Reason: Extensive deterioration

Falkner Island Light
U.S. Coast Guard
Guilford Co: New Haven CT 06512–
Landholding Agency: DOT
Property Number: 87199240031
Status: Unutilized
Reason: Floodway

Florida

Bldg. 1345
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200210016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 24451
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200210017
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 55122
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200210018
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. #3, Recreation Cottage
USCG Station
Marathon Co: Monroe FL 33050–
Landholding Agency: DOT
Property Number: 87199210008
Status: Unutilized
Reasons: Floodway; Secured Area

Bldg. 103, Trumbo Point
Key West Co: Monroe FL 33040–
Landholding Agency: DOT
Property Number: 87199230001
Status: Unutilized
Reasons: Floodway; Secured Area

Exchange Building
St. Petersburg Co: Pinellas FL 33701–
Landholding Agency: DOT
Property Number: 87199410004
Status: Unutilized
Reason: Floodway

9988 Keepers Quarters A
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440009
Status: Underutilized
Reasons: Floodway; Secured Area

9989 Keepers Quarters B
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440010
Status: Underutilized
Reasons: Floodway; Secured Area

9990 Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440011
Status: Underutilized
Reasons: Floodway; Secured Area

9991 Plant Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440012
Status: Underutilized
Reasons: Floodway; Secured Area

9992 Shop Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440013
Status: Underutilized
Reasons: Floodway; Secured Area

9993 Admin. Bldg.

Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440014
Status: Underutilized
Reasons: Floodway; Secured Area

9994 Water Pump Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440015
Status: Underutilized
Reasons: Floodway; Secured Area

Storage Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440016
Status: Underutilized
Reasons: Floodway; Secured Area

9999 Storage Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440017
Status: Underutilized
Reasons: Floodway; Secured Area

3 Bldgs. and Land
Peanut Island Station
Riveria Beach Co: Palm Beach FL 33419–0909
Landholding Agency: DOT
Property Number: 87199510009
Status: Unutilized
Reasons: Floodway; Secured Area

Cape St. George Lighthouse
Co: Franklin FL 32328–
Landholding Agency: DOT
Property Number: 87199640002
Status: Unutilized
Reason: Extensive deterioration

Maint/Carpentry Shop
USCG Station
St. Petersburg Co: Pinellas FL 33701–
Landholding Agency: DOT
Property Number: 87200120001
Status: Excess
Reasons: Secured Area; Extensive deterioration

Georgia

Coast Guard Station
St. Simons Island
Co: Glynn GA 31522–0577
Landholding Agency: DOT
Property Number: 87199540002
Status: Unutilized
Reason: Extensive deterioration

Idaho

Bldg. AFD0070
Albeni Falls Dam
Oldtown Co: Bonner ID 83822–
Landholding Agency: COE
Property Number: 31199910001
Status: Unutilized
Reason: Extensive deterioration

Bldg. PBF–621
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610001
Status: Unutilized
Reason: Secured Area

Bldg. CPP–691
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610003
Status: Unutilized
Reason: Secured Area

Bldg. CPP–625
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610004
Status: Unutilized
Reason: Secured Area

Bldg. CPP–650
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610005
Status: Unutilized
Reason: Secured Area

Bldg. CPP–608
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610006
Status: Unutilized
Reason: Secured Area

Bldg. TAN–660
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610007
Status: Unutilized
Reason: Secured Area

Bldg. TAN–636
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610008
Status: Unutilized
Reason: Secured Area

Bldg. TAN–609
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610009
Status: Unutilized
Reason: Secured Area

Bldg. TAN–670
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610010
Status: Unutilized
Reason: Secured Area

Bldg. TAN–661
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610011
Status: Unutilized
Reason: Secured Area

Bldg. TAN–657
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610012
Status: Unutilized
Reason: Secured Area

Bldg. TRA–669
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610013
Status: Unutilized
Reason: Secured Area

Bldg. TAN–637
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610014
Status: Unutilized
Reason: Secured Area

Bldg. TAN–635
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610015
Status: Unutilized
Reason: Secured Area

Bldg. TAN–638
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610016
Status: Unutilized
Reason: Secured Area

Bldg. TAN–651
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610017
Status: Unutilized
Reason: Secured Area

Bldg. TRA–673
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610018
Status: Unutilized
Reason: Secured Area

Bldg. PBF–620
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610019
Status: Unutilized
Reason: Secured Area

Bldg. PBF–616
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610020
Status: Unutilized
Reason: Secured Area

Bldg. PBF–617
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610021
Status: Unutilized
Reason: Secured Area

Bldg. PBF–619
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610022
Status: Unutilized
Reason: Secured Area

Bldg. PBF–624
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610023
Status: Unutilized
Reason: Secured Area

Bldg. PBF–625
Idaho National Engineering Laboratory

Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610024
Status: Unutilized
Reason: Secured Area

Bldg. PBF–629
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610025
Status: Unutilized
Reason: Secured Area

Bldg. PBF–604
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610026
Status: Unutilized
Reason: Secured Area

Bldg. TRA–641
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610034
Status: Unutilized
Reason: Secured Area

Bldg. CF–606
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610037
Status: Unutilized
Reason: Secured Area

TAN 602, 631, 663, 702, 724
Idaho Natl Engineering & Environmental Lab
Test Area North
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199830002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

8 Bldgs.
Idaho Natl Engineering & Environmental Lab
Test Reactor North
Scoville Co: Butte ID 83415–
Location: TRA 643, 644, 655, 660, 704–706, 755
Landholding Agency: Energy
Property Number: 41199830003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Illinois

Calumet Harbor Station
U.S. Coast Guard
Chicago Co: Cook IL
Landholding Agency: DOT
Property Number: 87199310005
Status: Excess
Reason: Secured Area

Indiana

Bldg. 21, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230001
Status: Excess
Reason: Extensive deterioration

Bldg. 22, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230002
Status: Excess
Reason: Extensive deterioration

Bldg. 62, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230003
Status: Excess
Reason: Extensive deterioration

Iowa

Treatment Plant
South Fork Park
Mystic Co: Appanoose IA 52574–
Landholding Agency: COE
Property Number: 31200220002
Status: Excess
Reason: Extensive deterioration

Kansas

No. 01017
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200210001
Status: Unutilized
Reason: Extensive deterioration

No. 01020
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200210002
Status: Unutilized
Reason: Extensive deterioration

No. 61001
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200210003
Status: Unutilized
Reason: Extensive deterioration

Bldg. #1
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200220003
Status: Excess
Reason: Extensive deterioration

Bldg. #2
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200220004
Status: Excess
Reason: Extensive deterioration

Bldg. #4
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200220005
Status: Excess
Reason: Extensive deterioration

Comfort Station
Clinton Lake Project
Lawrence Co: Douglas KS 66049–
Landholding Agency: COE
Property Number: 31200220006
Status: Excess
Reason: Extensive deterioration

Kentucky

Spring House
Kentucky River Lock and Dam No. 1
Highway 320
Carrollton Co: Carroll KY 41008–
Landholding Agency: COE
Property Number: 21199040416
Status: Unutilized
Reason: Spring House

6-Room Dwelling
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120010
Status: Unutilized
Reason: Floodway

2-Car Garage
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120011
Status: Unutilized
Reason: Floodway

Office and Warehouse
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120012
Status: Unutilized
Reason: Floodway

2 Pit Toilets
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
—Landholding Agency: COE
Property Number: 31199120013
Status: Unutilized
Reason: Floodway

Comfort Station
Trace Branch Rec. Site
Buckhorn Lake Co: Leslie KY
Landholding Agency: COE
Property Number: 31200230001
Status: Excess
Reason: Extensive deterioration

Comfort Station
Confluence Rec. Area
Buckhorn Lake Co: Leslie KY
Landholding Agency: COE
Property Number: 31200230002
Status: Excess
Reason: Extensive deterioration

Comfort Station
Tailwater Area
Buckhorn Co: Perry KY
Landholding Agency: COE
Property Number: 31200230003
Status: Excess
Reason: Extensive deterioration

Louisiana

Weeks Island Facility
New Iberia Co: Iberia Parish LA 70560–
Landholding Agency: Energy
Property Number: 41199610038
Status: Underutilized
Reason: Secured Area

Maine

Supply Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240005

Status: Unutilized
Reason: Floodway

Base Exchange, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240006
Status: Unutilized
Reason: Floodway

Engineering Shop, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240007
Status: Unutilized
Reason: Floodway

Storage Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240008
Status: Unutilized
Reason: Floodway

Squirrel Point Light
U.S. Coast Guard
Phippsburg Co: Sagadahoc ME 04530–
Landholding Agency: DOT
Property Number: 87199240032
Status: Unutilized
Reason: Floodway

Keepers Dwelling
Heron Neck Light, U.S. Coast Guard
Vinalhaven Co: Knox ME 04841–
Landholding Agency: DOT
Property Number: 87199240035
Status: Unutilized
Reason: Extensive deterioration

Fort Popham Light
Phippsburg Co: Sagadahoc ME 04562–
Landholding Agency: DOT
Property Number: 87199320024
Status: Unutilized
Reason: Extensive deterioration

Nash Island Light
U.S. Coast Guard
Addison Co: Washington ME 04606–
—Landholding Agency: DOT
Property Number: 87199420005
Status: Unutilized
Reason: Inaccessible

Bldg.—South Portland Base
U.S. Coast Guard
S. Portland Co: Cumberland ME 04106–
Landholding Agency: DOT
Property Number: 87199420006
Status: Unutilized
Reason: Secured Area

Garage—Boothbay Harbor Stat.
Boothbay Harbor Co: Lincoln ME 04538–
Landholding Agency: DOT
Property Number: 87199430001
Status: Unutilized
Reason: Secured Area

Maryland

Bldg. 149
Naval Air Station
Patuxent River Co: MD
Landholding Agency: Navy
Property Number: 77200230038
Status: Excess
Reason: Extensive deterioration

Bldg. 425
Naval Air Station
Patuxent River Co: MD
Landholding Agency: Navy
Property Number: 77200230039
Status: Excess
Reason: Extensive deterioration

Bldgs. 38–39, 41, 43–46, 56
U.S. Coast Guard Yard
Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87199540005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 53
U.S. Coast Guard Yard
Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87199540006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 6
U.S. Coast Guard Yard, 2401 Hawkins Point Rd.
Baltimore MD 21226–1797
Landholding Agency: DOT
Property Number: 87199620001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 59
U.S. Coast Guard Yard, 2401 Hawkins Point Rd.
Baltimore MD 21226–1797
Landholding Agency: DOT
Property Number: 87199620002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

5 Bldgs.
USCG Yard
#9, 21, 23, 52, 57
Baltimore Co: MD 21226–
Landholding Agency: DOT
Property Number: 87200120002
Status: Unutilized
Reason: Extensive deterioration

Bldg. #81
U.S. Coast Guard Yard
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210001
Status: Underutilized
Reason: Secured Area

Bldg. #85
U.S. Coast Guard Yard
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210002
Status: Underutilized
Reason: Secured Area

Bldg. #86
U.S. Coast Guard Yard
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210003
Status: Underutilized
Reason: Secured Area

Bldg. #86D
U.S. Coast Guard Yard
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210004
Status: Underutilized
Reason: Secured Area

Bldg. #149
U.S. Coast Guard Yard
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210005
Status: Underutilized
Reason: Secured Area

Massachusetts

Bldg. 4, USCG Support Center
Commercial Street
Boston Co: Suffolk MA 02203–
Landholding Agency: DOT
Property Number: 87199240001
Status: Underutilized
Reason: Secured Area

Eastern Point Light
U.S. Coast Guard
Gloucester Co: Essex MA 01930–
Landholding Agency: DOT
Property Number: 87199240029
Status: Unutilized
Reasons: Floodway; Secured Area

Storage Shed
Highland Light
N. Truro Co: Barnstable MA 02652–
Location: DeSoto Johnson KS66018–
Landholding Agency: DOT
Property Number: 87199430004
Status: Unutilized
Reason: Extensive deterioration

Westview Street Wells
Lexington Co: MA 02173–
Landholding Agency: VA
Property Number: 97199920001
Status: Unutilized
Reason: Extensive deterioration

Michigan

Boathouse
Coast Guard Station
East Tawas Co: Iosco MI 48730–
Landholding Agency: DOT
Property Number: 87200040003
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Storage Shed (OS2)
USCG Station
Port Huron Co: St. Clair MI 48060–
Landholding Agency: DOT
Property Number: 87200110036
Status: Unutilized
Reasons: Floodway; Secured Area

Station Bldg.
USCG Station
Manistee Co: MI 49660–
Landholding Agency: DOT
Property Number: 87200120003
Status: Unutilized
Reasons: Floodway; Secured Area

Garage Bldg.
USCG Station
Manistee Co: MI 49660–
Landholding Agency: DOT
Property Number: 87200120004
Status: Unutilized
Reasons: Floodway; Secured Area

Shed/Pump Bldg.
USCG Station

Manistee Co: MI 49660–
Landholding Agency: DOT
Property Number: 87200120005
Status: Unutilized
Reasons: Floodway; Secured Area

Storage Bldg.
USCG Station
Manistee Co: MI 49660–
Landholding Agency: DOT
Property Number: 87200120006
Status: Unutilized
Reasons: Floodway; Secured Area

Station/boathouse Bldg.
USCG Harbor Beach Station
Harbor Beach Co: Huron MI 48441–
Landholding Agency: DOT
Property Number: 87200130001
Status: Unutilized
Reasons: Floodway; Extensive deterioration

Calfac Building
Keweenaw Peninsula Waterway
Hancock Township Co: Houghton MI
Landholding Agency: DOT
Property Number: 87200140013
Status: Unutilized
Reason: Secured Area;

Storage Bldg.
US Coast Guard Station
Essexville Co: Bay MI 48732–
Landholding Agency: DOT
Property Number: 87200210011
Status: Excess
Reason: Secured Area

Mississippi

Natchez Moorings
82 L.E. Berry Road
Natchez Co: Adams MS 39121–
Landholding Agency: DOT
Property Number: 87199340002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 6, Boiler Plant
Biloxi VA Medical Center
Gulfport Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 97199410001
Status: Unutilized
Reason: Floodway

Bldg. 67
Biloxi VA Medical Center
Gulfport Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 97199410008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 68
Biloxi VA Medical Center
Gulfport Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 97199410009
Status: Unutilized
Reason: Extensive deterioration

Missouri

Rec Office
Harry S. Truman Dam & Reservoir
Osceola Co: St. Clair MO 64776–
Landholding Agency: COE
Property Number: 31200110001
Status: Unutilized
Reason: Extensive deterioration

Privy/Nemo Park
Pomme de Terre Lake
Hermitage Co: MO 65668–
Landholding Agency: COE
Property Number: 31200120001
Status: Excess
Reason: Extensive deterioration

Privy No. 1/Bolivar Park
Pomme de Terre Lake
Hermitage Co: MO 65668–
Landholding Agency: COE
Property Number: 31200120002
Status: Excess
Reason: Extensive deterioration

Privy No. 2/Bolivar Park
Pomme de Terre Lake
Hermitage Co: MO 65668–
Landholding Agency: COE
Property Number: 31200120003
Status: Excess
Reason: Extensive deterioration

#07004, 60006, 60007
Crabtree Cove/Stockton Area
Stockton Co: MO 65785–
Landholding Agency: COE
Property Number: 31200220007
Status: Excess
Reason: Extensive deterioration

Montana

Bldg. 347
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200220011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 3063
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200220012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 3064
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200220013
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Nebraska

Vault Toilets
Harlan County Project
Republican Co: NE 68971–
Landholding Agency: COE
Property Number: 31200210006
Status: Unutilized
Reason: Extensive deterioration

Patterson Treatment Plant
Harlan County Project
Republican Co: NE 68971–
Landholding Agency: COE
Property Number: 31200210007
Status: Unutilized
Reason: Extensive deterioration

#30004
Harlan County Project
Republican Co: Harlan NE 68971–
Landholding Agency: COE
Property Number: 31200220008
Status: Unutilized
Reason: Extensive deterioration

#3005, 3006
Harlan County Project
Republican Co: Harlan NE 68971–
Landholding Agency: COE
Property Number: 31200220009
Status: Unutilized
Reason: Extensive deterioration

New Jersey

Piers and Wharf
Station Sandy Hook
Highlands Co: Monmouth NJ 07732–5000
Landholding Agency: DOT
Property Number: 87199240009
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Chapel Hill Front Range Light Tower
Middletown Co: Monmouth NJ 07748–
Landholding Agency: DOT
Property Number: 87199440002
Status: Unutilized
Reason: Skeletal tower

Bldg. 103
U.S. Coast Guard Station Sandy Hook
Middleton Co: Monmouth NJ 07737–
Landholding Agency: DOT
Property Number: 87199610002
Status: Unutilized
Reason: Secured Area

Ship Stg. Bldg.
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200110018
Status: Excess
Reason: Secured Area

Exchange Whse
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200110019
Status: Excess
Reason: Secured Area

Patrol Boat Bldg.
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200110020
Status: Excess
Reason: Secured Area

Station Bldg.
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200110021
Status: Excess
Reason: Secured Area

ANT Bldg.
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200110022
Status: Excess
Reason: Secured Area

Quarters C
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200120012
Status: Excess
Reason: Secured Area

Central Heating Plant
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT

Property Number: 87200120013
Status: Excess
Reason: Secured Area

Hangar/Shop
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200120014
Status: Excess
Reason: Secured Area

Bldg. 195
U.S. Coast Guard
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200220001
Status: Excess
Reason: Secured Area

Bldg. 204
U.S. Coast Guard
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200220002
Status: Excess
Reason: Secured Area

Bldg. 208
U.S. Coast Guard
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200220003
Status: Excess
Reason: Secured Area

Bldg. 209
U.S. Coast Guard
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200220004
Status: Excess
Reason: Secured Area

New Mexico

Bldg. 14170
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230010
Status: Unutilized
Reason: Secured Area

Bldg. 14240
Cannon AFB
Cannon AFB Co: NM
Landholding Agency: Air Force
Property Number: 18200230011
Status: Unutilized
Reason: Secured Area

Bldg. 14270
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230012
Status: Unutilized
Reason: Secured Area

Bldg. 14330
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230013
Status: Unutilized
Reason: Secured Area

Bldg. 14350
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230014
Status: Unutilized
Reason: Secured Area

Bldg. 14370
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230015
Status: Unutilized
Reason: Secured Area

Bldg. 14390
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230016
Status: Unutilized
Reason: Secured Area

Bldgs. 9252, 9268
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 41199430002
Status: Unutilized
Reason: Extensive deterioration

Tech Area II
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87105–
Landholding Agency: Energy
Property Number: 41199630004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 1, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810001
Status: Unutilized
Reasons: Secured Area Extensive deterioration

Bldg. 2, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810002
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 24, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810003
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 26, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810004
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 86, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810005
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 88, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810006
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 89, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810007
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 2, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810008
Status: Underutilized
Reason: Secured Area

Bldg. 5, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810011
Status: Unutilized
Reason: Secured Area

Bldg. 21, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810012
Status: Unutilized
Reason: Secured Area

Bldg. 116, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810013
Status: Unutilized
Reason: Secured Area

Bldg. 212, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810014
Status: Unutilized
Reason: Secured Area

Bldg. 228, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810015
Status: Unutilized
Reason: Secured Area

Bldg. 286, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810016
Status: Unutilized
Reason: Secured Area

Bldg. 63, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810019
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Extensive deterioration

Bldg. 515, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy

Property Number: 41199810020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 516, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 517, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 518, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 519, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810024
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 520, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810025
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 18, TA–16
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199840001
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 31
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199930003
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 4, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199930004
Status: Unutilized
Reason: Secured Area

Bldg. 50, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199930005
Status: Unutilized
Reason: Secured Area

Bldg. 88, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199930006
Status: Unutilized
Reason: Secured Area

Bldg. 89, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199930007
Status: Unutilized
Reason: Secured Area

Bldg. 21, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940001
Status: Unutilized
Reason: Secured Area

Bldg. 57, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940002
Status: Unutilized
Reason: Secured Area

Bldg. 28, TA–8
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940003
Status: Unutilized
Reason: Secured Area

Bldg. 38, TA–14
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940004
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 8, TA–15
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940005
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9, TA–15
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940006
Status: Unutilized
Reason: Secured Area

Bldg. 22, TA–15
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940007
Status: Unutilized
Reason: Secured Area

Bldg. 141, TA–15
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940008
Status: Unutilized
Reason: Secured Area

Bldg. 44, TA–15
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940009
Status: Unutilized
Reason: Secured Area

Bldg. 2, TA–18
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940010
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 5, TA–18
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940011
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 186, TA–18
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940012
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 188, TA–18
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940013
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 254, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940014
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 44, TA–36
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940015
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 45, TA–36
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940016
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 19, TA–40
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940017
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 43, TA–40
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940018
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 258, TA–46
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940019
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

TA–2, Bldg. 1
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010008
Status: Unutilized
Reason: Secured Area

TA–2, Bldg. 44
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010009
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

TA–3, Bldg. 208
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010010
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

TA–6, Bldg. 1
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010011
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

TA–6, Bldg. 2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010012
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

TA–6, Bldg. 3
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010013
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

TA–6, Bldg. 5
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010014
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

TA–6, Bldg. 6
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010015
Status: Unutilized
Reason: Secured Area

TA–6, Bldg. 7
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010016
Status: Unutilized
Reason: Secured Area

TA–6, Bldg. 8
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010017
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

TA–6, Bldg. 9
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010018
Status: Unutilized
Reason: Secured Area

TA–14, Bldg. 5
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010019
Status: Unutilized
Reason: Secured Area

TA–21, Bldg. 150
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010020
Status: Unutilized
Reason: Secured Area

Bldg. 149, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010024
Status: Unutilized
Reason: Secured Area

Bldg. 312, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010025
Status: Unutilized
Reason: Secured Area

Bldg. 313, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010026
Status: Unutilized
Reason: Secured Area

Bldg. 314, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010027
Status: Unutilized
Reason: Secured Area

Bldg. 315, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010028
Status: Unutilized
Reason: Secured Area

Bldg. 1, TA–8
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010029
Status: Unutilized
Reason: Secured Area

Bldg. 2, TA–8
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010030
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 3, TA–8
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020001
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 51, TA–9
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020002
Status: Unutilized
Reason: Secured Area

Bldg. 30, TA–14
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020003
Status: Unutilized
Reason: Secured Area

Bldg. 16, TA–3
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020009
Status: Unutilized
Reason: Secured Area

Bldg. 339, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020010
Status: Unutilized
Reason: Secured Area

Bldg. 340, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020011
Status: Unutilized
Reason: Secured Area

Bldg. 341, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020012
Status: Unutilized
Reason: Secured Area

Bldg. 342, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020013
Status: Unutilized
Reason: Secured Area

Bldg. 343, TA–16

Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020014
Status: Unutilized
Reason: Secured Area

Bldg. 345, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020015
Status: Unutilized
Reason: Secured Area

Bldg. 16, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020016
Status: Unutilized
Reason: Secured Area

Bldg. 48, TA–55
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020017
Status: Unutilized
Reason: Secured Area

Bldg. 125, TA–55
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020018
Status: Unutilized
Reason: Secured Area

Bldg. 162, TA–55
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020019
Status: Unutilized
Reason: Secured Area

Bldg. 22, TA–33
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020022
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 23, TA–49
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020023
Status: Unutilized
Reason: Secured Area

Bldg. 37, TA–53
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020024
Status: Unutilized
Reason: Secured Area

Bldg. 121, TA–49
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020025
Status: Unutilized
Reason: Secured Area

Bldg. 30, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200040001
Status: Unutilized
Reason: Secured Area

Bldg. 152 TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200040002
Status: Unutilized
Reason: Secured Area

Bldg. 105, TA–3
Los Alamos Natl Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200120007
Status: Excess
Reason: Secured Area

Bldg. 452, TA–3
Los Alamos Natl Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200120008
Status: Excess
Reason: Secured Areaq

5 Bldgs.
Kirtland AFB
Sandia Natl Lab
Albuquerque Co: Bernalillo NM 87185–
Location: 9927, 9970, 6730, 6731, 6555
Landholding Agency: Energy
Property Number: 41200210014
Status: Excess
Reason: Extensive deterioration

6 Bldgs.
Kirtland AFB
Sandia Natl Lab
Albuquerque Co: Bernalillo NM 87185–
Location: 6725, 841, 884, 892, 893, 9800
Landholding Agency: Energy
Property Number: 41200210015
Status: Excess
Reason: Extensive deterioration

TA–53, Bldg. 61
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200220023
Status: Unutilized
Reason: Extensive deterioration

TA–53, Bldg. 63
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200220024
Status: Unutilized
Reason: Extensive deterioration

TA–53, Bldg. 65
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200220025
Status: Unutilized
Reason: Extensive deterioration

Bldg. B117
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117–
Landholding Agency: Energy
Property Number: 41200220032
Status: Excess
Reason: Extensive deterioration

Bldg. B118
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117–
Landholding Agency: Energy
Property Number: 41200220033
Status: Excess
Reason: Extensive deterioration

Bldg. B119
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117–
Landholding Agency: Energy
Property Number: 41200220034
Status: Excess
Reason: Extensive deterioration

Bldg. 6721
Kirtland AFB
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 41200220042
Status: Unutilized
Reason: Extensive deterioration

New York

6 UG Missle Silos
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 100
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 101
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 104
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 107
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 109
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 116
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220009
Status: Unutilized
Reason: Extensive deterioration

Warehouse
Whitney Lake Project
Whitney Point Co: Broome NY 13862–0706
Landholding Agency: COE
Property Number: 31199630007
Status: Unutilized

Reason: Extensive deterioration

2 Buildings
Ant Saugerties
Saugerties Co: Ulster NY 12477–
Landholding Agency: DOT
Property Number: 87199230005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 606, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 87199240020
Status: Unutilized
Reason: Secured Area

Bldg. 607, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 87199240021
Status: Unutilized
Reasons: Extensive deterioration; Secured Area

Bldg. 605, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 87199240022
Status: Unutilized
Reasons: Extensive deterioration; Secured Area

Eatons Neck Station
U.S. Coast Guard
Huntington Co: Suffolk NY 11743–
Landholding Agency: DOT
Property Number: 87199310003
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 517, USCG Support Center
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 87199320025
Status: Unutilized
Reason: Secured Area

Bldg. 138
U.S. Coast Guard Support Center
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 87199410003
Status: Unutilized
Reason: Secured Area

Bldg. 830
U.S. Coast Guard
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 87199420004
Status: Unutilized
Reason: Secured Area

Bldg. 8
Rosebank—Coast Guard Housing
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199530009
Status: Unutilized
Reason: Secured Area

Bldg. 7
Rosebank—Coast Guard Housing
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199530010
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 222
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 87199620003
Status: Unutilized
Reason: Secured Area

Bldg. 223
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 87199620004
Status: Unutilized
Reason: Secured Area

Bldg. 205
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 87199620005
Status: Unutilized
Reason: Secured Area

Bldg. 9
U.S. Coast Guard—Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199630027
Status: Excess
Reason: Secured Area

Bldg. 10
U.S. Coast Guard—Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199630028
Status: Excess
Reason: Secured Area

Bldg. 206, Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199630029
Status: Excess
Reason: Secured Area

Cottage
Coast Guard Station
Wellesley Island Co: Jefferson NY 13640–
Landholding Agency: DOT
Property Number: 87199940001
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. OK1
Coast Guard Station
Alexandria Bay Co: Jefferson NY 13640–
Landholding Agency: DOT
Property Number: 87200210017
Status: Unutilized
Reason: Secured Area

Bldg. OK2
Coast Guard Station
Alexandria Bay Co: Jefferson NY 13640–
Landholding Agency: DOT
Property Number: 87200210018
Status: Unutilized
Reason: Secured Area

Bldg. OK3
Coast Guard Station
Alexandria Bay Co: Jefferson NY 13640–
Landholding Agency: DOT
Property Number: 87200210019
Status: Unutilized
Reason: Secured Area

Bldg. OG1
Coast Guard Station
Alexandria Bay Co: Jefferson NY 13640–
Landholding Agency: DOT
Property Number: 87200210020
Status: Unutilized
Reason: Secured Area

Bldg. OG2
Coast Guard Station
Alexandria Bay Co: Jefferson NY 13640–
Landholding Agency: DOT
Property Number: 87200210021
Status: Unutilized
Reason: Secured Area

North Carolina

Group Cape Hatteras
Boiler Plant
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199240018
Status: Unutilized
Reason: Secured Area

Group Cape Hatteras
Bowling Alley
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199240019
Status: Unutilized
Reason: Secured Area

Bldg. 54
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199340004
Status: Unutilized
Reason: Secured Area

Bldg. 83
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199340005
Status: Unutilized
Reason: Secured Area

Water Tanks
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199340006
Status: Unutilized
Reason: Secured Area

USCG Gentian (WLB 290)
Fort Macon State Park
Atlantic Beach Co: Carteret NC 27601–
Landholding Agency: DOT
Property Number: 87199420007
Status: Excess
Reason: Secured Area

Unit #71
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530011
Status: Unutilized
Reason: Floodway

Unit #72
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530012
Status: Unutilized
Reason: Floodway

Unit #73
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530013
Status: Unutilized
Reason: Floodway

Unit #74
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–

Landholding Agency: DOT
Property Number: 87199530014
Status: Unutilized
Reason: Floodway

Unit #75
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530015
Status: Unutilized
Reason: Floodway

Unit #63
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920-
Landholding Agency: DOT
Property Number: 87199530016
Status: Unutilized
Reason: Floodway

Unit #64
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530017
Status: Unutilized
Reason: Floodway

Unit #76
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530018
Status: Unutilized
Reason: Floodway

Unit #68
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530019
Status: Unutilized
Reason: Floodway

Unit #69
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530020
Status: Unutilized
Reason: Floodway

Unit #70
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530021
Status: Unutilized
Reason: Floodway

Unit #77
Buxton Annex, Old Lighthouse Road
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530022
Status: Unutilized
Reason: Floodway

Unit #78
Buxton Annex, Old Lighthouse Road
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530023
Status: Unutilized
Reason: Floodway

Bldg. 53
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 87199630022
Status: Unutilized
Reason: Secured Area

Bldg. OV1 (033)
USCG Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87200210012
Status: Underutilized
Reason: Secured Area

Storage Bldg.
USCG Loran Station
Carolina Beach Co: New Hanover NC
Landholding Agency: DOT
Property Number: 87200210013
Status: Underutilized
Reason: Secured Area

MK Shed
USCG Loran Station
Carolina Beach Co: New Hanover NC
Landholding Agency: DOT
Property Number: 87200210014
Status: Underutilized
Reason: Secured Area

Bldg. 9
VA Medical Center 1100 Tunnel Road
Asheville Co: Buncombe NC 28805–
Landholding Agency: VA
Property Number: 97199010008
Status: Unutilized
Reason: Extensive deterioration

Ohio

Bldg. 77
Fernald Environmental Management Project
Fernald Co: Hamilton OH 45013–
Landholding Agency: Energy
Property Number: 41199840003
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 82A
Fernald Environmental Mgmt Project
Fernald Co: Hamilton OH 45013–
Landholding Agency: Energy
Property Number: 41199910018
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 16
RMI Environmental Services
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41199930016
Status: Unutilized
Reason: Secured Area

Bldg. 22B
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–9402
Landholding Agency: Energy
Property Number: 41200020026
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 53A
Fernald Env. Mgmt. Project
Fernald Co: Hamilton OH 45013–9402
Landholding Agency: Energy
Property Number: 41200120009
Status: Excess
Reason: Secured Area

Bldg. 8G
Fernald Environmental Mgmt Project
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200210003
Status: Excess
Reason: Secured Area

Bldg. 8H
Fernald Environmental Mgmt Project
Hamilton Co: OH 45013
Landholding Agency: Energy
Property Number: 41200210004
Status: Excess
Reason: Secured Area

Bldg. 94A
Fernald Environmental Mgmt Project
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200210005
Status: Excess
Reason: Secured Area

Bldg. 11
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220026
Status: Excess
Reason: Secured Area

Bldg. 14A
Fernald Env. Mgmt. Proj
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220027
Status: Excess
Reason: Secured Area

Bldg. 15A
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220028
Status: Excess
Reason: Secured Area

Bldg. 15C
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220029
Status: Excess
Reason: Secured Area

Bldg. 20K
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220030
Status: Excess
Reason: Secured Area

Bldg. 53B
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220031
Status: Excess
Reason: Secured Area

Bldg. 116
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number: 97199920002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 402
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number: 97199920004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 105
VA Medical Center

Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number: 97199920005
Status: Unutilized
Reason: Extensive deterioration

Oregon

Bldg. 8
USCG Tongue Point Moorings
Astoria Co: OR 97103–2099
Landholding Agency: DOT
Property Number: 87199910001
Status: Unutilized
Reason: Extensive deterioration

Duplex
Cape Blanco
Sixes Co: Curry OR 97465–
Landholding Agency: DOT
Property Number: 87199940002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5
Coast Guard Group
Astoria Co: OR 97103–
Landholding Agency: DOT
Property Number: 87200210015
Status: Underutilized
Reason: Secured Area

Pennsylvania

Z-Bldg.
Bettis Atomic Power Lab
West Mifflin Co: Allegheny PA 15122–0109
Landholding Agency: Energy
Property Number: 41199720002
Status: Excess
Reason: Extensive deterioration

Puerto Rico

NAFA Warehouse
U.S. Coast Guard Air Station Borinquen
Aquadilla PR 00604–
Landholding Agency: DOT
Property Number: 87199310011
Status: Unutilized
Reason: Secured Area

Storage Equipment Bldg.
U.S. Coast Guard Air Station Borinquen
Aquadilla PR 00604–
Landholding Agency: DOT
Property Number: 87199330001
Status: Unutilized
Reason: Secured Area

Bldg. 115
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510001
Status: Unutilized
Reason: Secured Area

Bldg. 117
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510002
Status: Unutilized
Reason: Secured Area

Bldg. 118
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510003
Status: Unutilized
Reason: Secured Area

Bldg. 119
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510004
Status: Unutilized
Reason: Secured Area

Bldg. 120
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510005
Status: Unutilized
Reason: Secured Area

Bldg. 122
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510006
Status: Unutilized
Reason: Secured Area

Bldg. 128
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510007
Status: Unutilized
Reason: Secured Area

Bldg. 129
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510008
Status: Unutilized
Reason: Secured Area

Rhode Island

Station Point Judith Pier
Narranganset Co: Washington RI 02882–
Landholding Agency: DOT
Property Number: 87199310002
Status: Unutilized
Reason: Extensive deterioration

South Dakota

Mobile Home
Tract L–1295
Oahe Dam
Potter Co: SD 00000–
Landholding Agency: COE
Property Number: 31200030001
Status: Excess
Reason: Extensive deterioration

Tennessee

Bldg. 204
Cordell Hull Lake and Dam Project.
Defeated Creek Recreation Area
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 31199011499
Status: Unutilized
Reason: Floodway

Tract 2618 (Portion)
Cordell Hull Lake and Dam Project
Roaring River Recreation Area
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 135
Landholding Agency: COE
Property Number: 31199011503
Status: Underutilized
Reason: Floodway

Water Treatment Plant
Dale Hollow Lake & Dam Project
Obey River Park, State Hwy 42
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 31199140011
Status: Excess
Reason: water treatment plant

Water Treatment Plant
Dale Hollow Lake & Dam Project
Lillydale Recreation Area, State Hwy 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 31199140012
Status: Excess
Reason: water treatment plant

Water Treatment Plant
Dale Hollow Lake & Dam Project
Willow Grove Recreational Area, Hwy No. 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 31199140013
Status: Excess
Reason: water treatment plant

Bldg. 3004
Oak Ridge National Lab
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41199710002
Status: Unutilized
Reasons:
Secured Area; Extensive deterioration

Bldg. 3004
Oak Ridge National Lab
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41199720001
Status: Excess
Reason: Extensive deterioration

Bldgs. 9714–3, 9714–4, 9983–AY
Y–12 Pistol Range
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41199720004
Status: Unutilized
Reason: Secured Area

5 Bldgs.
K–724, K–725, K–1031, K–1131, K–1410
East Tennessee Technology Park
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41199730001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9418–1
Y–12 Plant
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41199810026
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9825
Y–12 Plant
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41199810027
Status: Unutilized
Reason: Secured Area

Bldg. 3026
Oak Ridge Natl Lab
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41199830001
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 3505
Oak Ridge National Lab

Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41199940020
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

9 Bldgs.
E. Tennessee Tech Park
Oak Ridge Co: Roane TN 37831–
Location: K–1001, K–1301, K–1302, K–1303, K–1404, K–1405–6, K–1407, K–1408A, K–1413
Landholding Agency: Energy
Property Number: 41200010023
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9723–16
National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200120010
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

5 Bldgs.
Oak Ridge National Lab
#7811, 7819, 7833, 7852, 7860
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41200130001
Status: Unutilized
Reasons: contamination; Secured Area; Extensive deterioration

Bldg. 81–22
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140001
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9409–26
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140002
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9723–4
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140003
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9733–4
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140004
Status: Unutilized
Reasons: Secured Area; Extensive deterioration 1

4 Bldgs.
Y–12 National Security Complex
#9929–1, 9823, 9827 & shed
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140005
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9949–1
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140006
Status: Unutilized
Reason: Secured Area

Bldg. 9949–31
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200210001
Status: Unutilized
Reason: Secured Area

Bldg. SC–14
ORISE Scarboro Operations Site
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200210002
Status: Excess
Reason: Secured Area

Bldg. 9723–18
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200210006
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9728
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200210007
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9404–03
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 39831–
Landholding Agency: Energy
Property Number: 41200220035
Status: Unutilized
Reason: Secured Area

Bldg. 9404–07
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220036
Status: Unutilized
Reason: Secured Area

Bldg. 9404–08
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220037
Status: Unutilized
Reason: Secured Area

4 Bldgs.
Y–12 Natl Security Complex
9418–4, 9418–5, 9418–6, 9418–9
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220038
Status: Unutilized
Reason: Secured Area

Bldg. 9620–2
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220039
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 9769, 9770–3
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220040
Status: Unutilized
Reason: Secured Area

Bldgs. 9720–1, 9720–2
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220041
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9723–21
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220043
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 9205, 9208
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220059
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 2013, 2506, 6003
Oak Ridge National Lab
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41200220060
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Texas

Zone 5, Bldg. FS–18
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220044
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 11, Bldg. 11–001
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220045
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 11, 3 Bldgs.
11–015, 11–015B, 11–046
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220046
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 11, Bldg. 11–041
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220047
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 11, Bldg. 11–044
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220048
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material
Secured Area

Zone 12, Bldg. 12–003P
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220049
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, Bldg. 12–05G1
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220050
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, 11 Bldgs.
Pantex Plant
Amarillo Co: Carson TX 79120–
Location: 12–010, 12–010V1, 12–010V2, 12–010L, 12–R–010, 12–012, 12-R–012, 12–012V, 12–R–013, 12–R–013RR, 12–13V
Landholding Agency: Energy
Property Number: 41200220051
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, Bldg. 12–017C
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220052
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, Bldg. 12–20
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220053
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, 8 Bldgs.
Pantex Plant
Amarillo Co: Carson TX 79120–
Location: 12–024, 12–024A, 12–02455, 12–025, 12–R–025, 12–030, 12–043, 12–043A
Landholding Agency: Energy
Property Number: 41200220054
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, Bldg. 12–27
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220055
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, Bldg. 12–038
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220056
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, 2 Bldgs.
Pantex Plant
Amarillo Co: Carson TX 79120–
Location: 12–076, 12–076A
Landholding Agency: Energy
Property Number: 41200220057
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 13, 6 Bldgs.
Pantex Plant
Amarillo Co: Carson TX 79120–
Location: 13–041, 13–042, 13–043, 13–044, 13–045, 13–046
Landholding Agency: Energy
Property Number: 41200220058
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Old Exchange Bldg.
U.S. Coast Guard
Galveston Co: Galveston TX 77553–3001
Landholding Agency: DOT
Property Number: 87199310012
Status: Unutilized
Reason: Secured Area

WPB Building
Station Port Isabel
Coast Guard Station
South Padre Island Co: Cameron TX 78597–6497
Landholding Agency: DOT
Property Number: 87199530002
Status: Unutilized
Reason: Floodway

Aton Shops Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

WPB Storage Shed
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Flammable Storage Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Battery Storage Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Boat House
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Small Boat Pier
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 108
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT

Property Number: 87199630008
Status: Unutilized
Reason: Extensive deterioration

Vermont
Depot Street
Downtown at the Waterfront
Burlington Co: Chittenden VT 05401–5226
Landholding Agency: DOT
Property Number: 87199220003
Status: Excess
Reason: Floodway

Virginia

Bldg. 052 & Tennis Court
USCG Reserve Training Center
Yorktown Co: York VA 23690–
Landholding Agency: DOT
Property Number: 87199230004
Status: Excess
Reason: Secured Area

Admin. Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361–510
Landholding Agency: DOT
Property Number: 87199240014
Status: Unutilized
Reason: Secured Area

Little Creek Station
Navamphib Base, West Annex, U.S. Coast Guard
Norfolk Co: Princess Anne VA 23520–
Landholding Agency: DOT
Property Number: 87199310004
Status: Unutilized
Reason: Secured Area

Operations Bldg.
U.S. Coast Guard Group Hampton Roads
Portsmouth VA 23703–
Landholding Agency: DOT
Property Number: 87199710003
Status: Unutilized
Reason: Secured Area

Bldgs. 63, 115
USCG Training Center
Yorktown Co: York VA 23690–5000
Landholding Agency: DOT
Property Number: 87200110037
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 156
USCG Training Center Yorktown
Yorktown Co: York VA 23690–5000
Landholding Agency: DOT
Property Number: 87200120015
Status: Underutilized

Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 002
USCG Eastern Shore
Chincoteague Co: Accomak VA 23336—
Landholding Agency: DOT
Property Number: 87200220007
Status: Excess
Reason: Secured Area

Washington

Bldgs. 935, 936, 956, 957
Naval Station
Bremerton Co: WA 98314–5020
Landholding Agency: Navy
Property Number: 77200230041
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Avionics Shop
Coast Guard Air Station
Port Angeles Co: Clallam WA 98362–
Landholding Agency: DOT
Property Number: 87200110023
Status: Unutilized
Reason: Secured Area

Storage Bldg.
Coast Guard Air Station
Port Angeles Co: Clallam WA 98362—
Landholding Agency: DOT
Property Number: 87200110024
Status: Underutilized
Reason: Secured Area

Maint. Work Shop
Coast Guard Air Station
Port Angeles Co: Clallam WA 98362—
Landholding Agency: DOT
Property Number: 87200110025
Status: Underutilized
Reason: Secured Area

Wisconsin

Rawley Point Light
Two Rivers Co: Manitowoc WI
Landholding Agency: DOT
Property Number: 87199540004
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Land (by State)

Alaska

Russian Creek Aggregate Site
USCG Support Center Kodiak
Kodiak Co: Kodiak AK 99619—
Landholding Agency: DOT
Property Number: 87199440025
Status: Excess
Reason: Floodway

Sargent Creek Aggregate Site
USCG Support Center Kodiak
Kodiak Co: Kodiak AK 99619–
Landholding Agency: DOT
Property Number: 87199440026
Status: Excess
Reason: Floodway

Arizona

58 acres
VA Medical Center 500 Highway 89 North
Prescott Co: Yavapai AZ 86313–
Landholding Agency: VA
Property Number: 97190630001
Status: Unutilized
Reason: Floodway

20 acres
VA Medical Center
500 Highway 89 North
Prescott Co: Yavapai AZ 86313–
Landholding Agency: VA
Property Number: 97190630002
Status: Underutilized
Reason: Floodway

Arkansas

Sandy Beach Rec Area
Camden Co: Ouachita AR 71701–
Landholding Agency: GSA
Property Number: 54200230010
Status: Surplus
Reason: Floodway
GSA Number : 7–D–AR–566

Florida

Land—approx. 220 acres
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440018
Status: Underutilized
Reasons: Floodway; Secured Area

Wildlife Sanctuary, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 97199230004
Status: Underutilized
Reason: Inaccessible

Kentucky

Tract 4626
Barkley, Lake, Kentucky and Tennessee
Donaldson Creek Launching Area
Cadiz Co: Trigg KY 42211–
Location: 14 miles from U.S. Highway 68
Landholding Agency: COE
Property Number: 31199010030
Status: Underutilized
Reason: Floodway

Tract AA–2747
Wolf Creek Dam and Lake Cumberland
US HWY. 27 to Blue John Road
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 31199010038
Status: Underutilized
Reason: Floodway

Tract AA–2726
Wolf Creek Dam and Lake Cumberland
KY HWY. 80 to Route 769
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 31199010039
Status: Underutilized
Reason: Floodway

Tract 1358
Barkley Lake, Kentucky and Tennessee
Eddyville Recreation Area
Eddyville Co: Lyon KY 42038–
Location: US Highway 62 to state highway 93
Landholding Agency: COE
Property Number: 31199010043
Status: Excess
Reason: Floodway

Red River Lake Project
Stanton Co: Powell KY 40380–
Location: Exit Mr. Parkway at the Stanton and Slade Interchange, then take SR Hand 15 north to SR 613.
Landholding Agency: COE
Property Number: 31199011684
Status: Unutilized
Reason: Floodway

Barren River Lock & Dam No. 1
Richardsville Co: Warren KY 42270–
Landholding Agency: COE
Property Number: 31199120008
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy. 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120009
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 4
Woodbury Co: Butler KY 42288–
Location: Off State Hwy 403, which is off State Hwy 231
Landholding Agency: COE
Property Number: 31199120014
Status: Underutilized
Reason: Floodway

Green River Lock & Dam No. 5
Readville Co: Butler KY 42275–
Location: Off State Highway 185
Landholding Agency: COE
Property Number: 31199120015
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 6
Brownsville Co: Edmonson KY 42210–
Location: Off State Highway 259
Landholding Agency: COE
Property Number: 31199120016
Status: Underutilized
Reason: Floodway

Vacant land west of locksite
Greenup Locks and Dam
5121 New Dam Road
Rural Co: Greenup KY 41144–
Landholding Agency: COE
Property Number: 31199120017
Status: Unutilized
Reason: Floodway

Maryland

Tract 131R
Youghiogheny River Lake, Rt. 2, Box 100
Friendsville Co: Garrett MD
Landholding Agency: COE
Property Number: 31199240007
Status: Underutilized
Reason: Floodway

Michigan

Middle Marker Facility
Yipsilanti Co: Washtenaw MI 48198–
Location: 549 ft. north of intersection of Coolidge and Bradley Ave. on East side of street
Landholding Agency: DOT
Property Number: 87199120006
Status: Unutilized
Reason: Within airport runway clear zone

Minnesota

3.85 acres (Area #2)
VA Medical Center 4801 8th Street
St. Cloud Co: Stearns MN 56303–
Landholding Agency: VA
Property Number: 97199740004
Status: Unutilized
Reason: landlocked

7.48 acres (Area #1)
VA Medical Center 4801 8th Street

St. Cloud Co: Stearns MN 56303–
Landholding Agency: VA
Property Number: 97199740005
Status: Underutilized
Reason: Secured Area

Mississippi

Parcel 1
Grenada Lake
Section 20
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 31199011018
Status: Underutilized
Reason: Within airport runway clear zone

Missouri

Ditch 19, Item 2, Tract No. 230
St. Francis Basin Project
2½ miles west of Malden
Co: Dunklin MO
Landholding Agency: COE
Property Number: 31199130001
Status: Unutilized
Reason: Floodway

New York

Tract 1
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17
Landholding Agency: VA
Property Number: 97199010011
Status: Unutilized
Reason: Secured Area

Tract 2
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17
Landholding Agency: VA
Property Number: 97199010012
Status: Underutilized
Reason: Secured Area

Tract 3
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17
Landholding Agency: VA
Property Number: 97199010013
Status: Underutilized
Reason: Secured Area

Tract 4
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17
Landholding Agency: VA
Property Number: 97199010014
Status: Unutilized
Reason: Secured Area

Ohio

Mosquito Creek Lake
Everett Hull Road Boat Launch
Cortland Co: Trumbull OH 44410–9321
Landholding Agency: COE
Property Number: 31199440007
Status: Underutilized
Reason: Floodway

Mosquito Creek Lake
Housel—Craft Rd., Boat Launch
Cortland Co: Trumbull OH 44410–9321
Landholding Agency: COE
Property Number: 31199440008
Status: Underutilized
Reason: Floodway

36 Site Campground
German Church Campground
Berlin Center Co: Portage OH 44401–9707
Landholding Agency: COE
Property Number: 31199810001
Status: Unutilized
Reason: Floodway

Pennsylvania

Lock and Dam #7
Monongahela River
Greensboro Co: Greene PA
Location: Left hand side of entrance roadway to project
Landholding Agency: COE
Property Number: 31199011564
Status: Unutilized
Reason: Floodway

Mercer Recreation Area
Shenango Lake
Transfer Co: Mercer PA 16154–
Landholding Agency: COE
Property Number: 31199810002
Status: Unutilized
Reason: Floodway

Tract No. B–212C
Upstream from Gen. Jadwin Dam & Reservoir
Honesdale Co: Wayne PA 18431–
Landholding Agency: COE
Property Number: 31200020005
Status: Unutilized
Reason: Floodway

Tennessee

Brooks Bend
Cordell Hull Dam and Reservoir
Highway 85 to Brooks Bend Road
Gainesboro Co: Jackson TN 38562—
Location: Tracts 800, 802–806, 835–837, 900–902, 1000–1003, 1025
Landholding Agency: COE
Property Number: 21199040413
Status: Underutilized
Reason: Floodway

Cheatham Lock and Dam
Highway 12
Ashland City Co: Cheatham TN 37015–
Location: Tracts E–513, E–512–1 and E–512–2
Landholding Agency: COE
Property Number: 21199040415
Status: Underutilized
Reason: Floodway

Tract 6737
Blue Creek Recreation Area
Barkley Lake, Kentucky and Tennessee
Dover Co: Stewart TN 37058–
Location: U.S. Highway 79/TN Highway 761
Landholding Agency: COE
Property Number: 31199011478
Status: Underutilized
Reason: Floodway

Tracts 3102, 3105, and 3106
Brimstone Launching Area
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 31199011479
Status: Excess
Reason: Floodway

Tract 3507
Proctor Site
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 52
Landholding Agency: COE
Property Number: 31199011480
Status: Unutilized
Reason: Floodway

Tract 3721
Obey
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 31199011481
Status: Unutilized
Reason: Floodway

Tracts 608, 609, 611 and 612
Sullivan Bend Launching Area
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 31199011482
Status: Underutilized
Reason: Floodway

Tract 920
Indian Creek Camping Area
Cordell Hull Lake and Dam Project
Granville Co: Smith TN 38564–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 31199011483
Status: Underutilized
Reason: Floodway

Tracts 1710, 1716 and 1703
Flynns Lick Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Whites Bend Road
Landholding Agency: COE
Property Number: 31199011484
Status: Underutilized
Reason: Floodway

Tract 1810
Wartrace Creek Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 31199011485
Status: Underutilized
Reason: Floodway

Tract 2524
Jennings Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 31199011486
Status: Unutilized
Reason: Floodway

Tracts 2905 and 2907
Webster
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 31199011487
Status: Unutilized
Reason: Floodway

Tracts 2200 and 2201
Gainesboro Airport
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–

Location: Big Bottom Road
Landholding Agency: COE
Property Number: 31199011488
Status: Underutilized
Reasons: Within airport runway clear zone; Floodway

Tracts 710C and 712C
Sullivan Island
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 31199011489
Status: Unutilized
Reason: Floodway

Tract 2403, Hensley Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 31199011490
Status: Unutilized
Reason: Floodway

Tracts 2117C, 2118 and 2120
Cordell Hull Lake and Dam Project
Trace Creek
Gainesboro Co: Jackson TN 38562–
Location: Brooks Ferry Road
Landholding Agency: COE
Property Number: 31199011491
Status: Unutilized
Reason: Floodway

Tracts 424, 425 and 426
Cordell Hull Lake and Dam Project
Stone Bridge
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 31199011492
Status: Unutilized
Reason: Floodway

Tract 517
J. Percy Priest Dam and Reservoir
Suggs Creek Embayment
Nashville Co: Davidson TN 37214–
Location: Interstate 40 to S. Mount Juliet Road
Landholding Agency: COE
Property Number: 31199011493
Status: Underutilized
Reason: Floodway

Tract 1811
West Fork Launching Area
Smyrna Co: Rutherford TN 37167–
Location: Florence road near Enon Springs Road
Landholding Agency: COE
Property Number: 31199011494
Status: Underutilized
Reason: Floodway

Tract 1504
J. Perry Priest Dam and Reservoir
Lamon Hill Recreation Area
Smyrna Co: Rutherford TN 37167–
Location: Lamon Road
Landholding Agency: COE
Property Number: 31199011495
Status: Underutilized
Reason: Floodway

Tract 1500
J. Perry Priest Dam and Reservoir
Pools Knob Recreation
Smyrna Co: Rutherford TN 37167–
Location: Jones Mill Road
Landholding Agency: COE
Property Number: 31199011496
Status: Underutilized
Reason: Floodway

Tracts 245, 257, and 256
J. Perry Priest Dam and Reservoir
Cook Recreation Area
Nashville Co: Davidson TN 37214–
Location: 2.2 miles south of Interstate 40 near Saunders Ferry Pike
Landholding Agency: COE
Property Number: 31199011497
Status: Underutilized
Reason: Floodway

Tracts 107, 109 and 110
Cordell Hull Lake and Dam Project
Two Prong
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 31199011498
Status: Unutilized
Reason: Floodway

Tracts 2919 and 2929
Cordell Hull Lake and Dam Project
Sugar Creek
Gainesboro Co: Jackson TN 38562–
Location: Sugar Creek Road
Landholding Agency: COE
Property Number: 31199011500
Status: Unutilized
Reason: Floodway

Tracts 1218 and 1204
Cordell Hull Lake and Dam Project
Granville—Alvin Yourk Road
Granville Co: Jackson TN 38564–
Landholding Agency: COE
Property Number: 31199011501
Status: Unutilized
Reason: Floodway

Tract 2100
Cordell Hull Lake and Dam Project
Galbreaths Branch
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 31199011502
Status: Unutilized
Reason: Floodway

Tract 104 et al.
Cordell Hull Lake and Dam Project
Horshoe Bend Launching Area
Carthage Co: Smith TN 37030–
Location: Highway 70 N
Landholding Agency: COE
Property Number: 31199011504
Status: Underutilized
Reason: Floodway

Tracts 510, 511, 513 and 514
J. Percy Priest Dam and Reservoir Project
Lebanon Co: Wilson TN 37087–
Location: Vivrett Creek Launching Area, Alvin Sperry Road
Landholding Agency: COE
Property Number: 31199120007
Status: Underutilized
Reason: Floodway

Tract A–142, Old Hickory Beach
Old Hickory Blvd.
Old Hickory Co: Davidson TN 37138–
Landholding Agency: COE
Property Number: 31199130008
Status: Underutilized
Reason: Floodway

Tract D, 7 acres
Cheatham Lock & Dam
Nashville Co: Davidson TN 37207–
Landholding Agency: COE
Property Number: 31200020006
Status: Underutilized
Reason: Floodway

Texas

Tracts 104, 105–1, 105–2 & 118
Joe Pool Lake
Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010397
Status: Underutilized
Reason: Floodway

Part of Tract 201–3
Joe Pool Lake
Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010398
Status: Underutilized
Reason: Floodway

Part of Tract 323
Joe Pool Lake
Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010399
Status: Underutilized
Reason: Floodway

Tract 702–3
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 31199010401
Status: Unutilized
Reason: Floodway

Tract 706
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 31199010402
Status: Unutilized
Reason: Floodway

West Virginia

Morgantown Lock and Dam
Box 3 RD # 2
Morgantown Co: Monongahelia WV 26505–
Landholding Agency: COE
Property Number: 31199011530
Status: Unutilized
Reason: Floodway

London Lock and Dam
Route 60 East
Rural Co: Kanawha WV 25126–
Location: 20 miles east of Charleston, W. Virginia
Landholding Agency: COE
Property Number: 31199011690
Status: Unutilized
Reason: .03 acres; very narrow strip of land

Portion of Tract #101
Buckeye Creek
Sutton Co: Braxton WV 26601–
Landholding Agency: COE
Property Number: 31199810006
Status: Excess
Reason: inaccessible

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August 30, 2002

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, and 476

Medicare Program; Prospective Payment System for Long-Term Care Hospitals: Implementation and FY 2003 Rates; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, and 476

[CMS–1177–F]

RIN 0938–AK69

Medicare Program; Prospective Payment System for Long-Term Care Hospitals: Implementation and FY 2003 Rates

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule establishes a prospective payment system for Medicare payment of inpatient hospital services furnished by long-term care hospitals (LTCHs) described in section 1886(d)(1)(B)(iv) of the Social Security Act (the Act). This final rule implements section 123 of the Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999 (BBRA) and section 307(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA). Section 123 of the BBRA directs the Secretary to develop and implement a prospective payment system for LTCHs. The prospective payment system described in this final rule replaces the reasonable cost-based payment system under which LTCHs are currently paid.

EFFECTIVE DATE: The provisions of this final rule are effective on October 1, 2002.

FOR FURTHER INFORMATION CONTACT:
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Judy Richter, (410) 786–2590 (General information, transition payments, payment adjustments, and onsite discharges and readmissions)
Michele Hudson, (410) 786–5490 (Calculation of the payment rates, relative weights and case-mix index, update factors, and payment adjustments)
Tiffany Eggers, (410) 786–0400 (Short-stay outliers, interrupted stays)
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Miechal Lefkowitz, (410) 786–5316 (High-cost outliers, capital payments, budget neutrality, market basket, and data sources)
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SUPPLEMENTARY INFORMATION:

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Acronyms

Because of the many terms to which we refer by acronym in this final rule, we are listing the acronyms used and their corresponding terms in alphabetical order below:

APR–DRGs All patient-refined, diagnosis-related groups
BBA Balanced Budget Act of 1997, Public Law 105–33
BBRA Medicare, Medicaid and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, Public Law 106–113
BIPA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Benefits Improvement and Protection Act of 2000, Public Law 106–554
CMGs Case-mix groups
CMI Case-mix index
CMS Centers for Medicare & Medicaid Services
DRGs Diagnosis-related groups
FY Federal fiscal year
HCRIS Hospital Cost Report Information System
HHA Home health agency
HIPAA Health Insurance Portability and Accountability Act, Public Law 104–191
IRF Inpatient rehabilitation facility
LTC–DRG Long-term care diagnosis-related group
LTCH Long-term care hospital
MDCN Medicare Data Collection Network
MedPAC Medicare Payment Advisory Commission
MedPAR Medicare provider analysis and review file
OSCAR Online Survey Certification and Reporting (System)
ProPAC Prospective Payment Assessment Commission
QIO Quality Improvement Organization (formerly Peer Review organization (PRO))
SNF Skilled nursing facility
TEFRA Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248

I. General Background

When the Medicare statute was originally enacted in 1965, Medicare payment for hospital inpatient services was based on the reasonable costs incurred in furnishing services to Medicare beneficiaries. Section 223 of the Social Security Act Amendments of 1972 (Pub. L. 92–603) amended section 1861(v)(1) of the Social Security Act (the Act) to set forth limits on reasonable costs for hospital inpatient services. Section 101(a) of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–48) amended the Medicare statute to limit payment by placing a cap on allowable costs per discharge. Section 601 of the Social Security Amendments of 1983 (Pub. L. 98–21) added section 1886(d) to the Act that replaced the reasonable cost-based payment system for most hospital inpatient services. Section 1886(d) of the Act provides for a prospective payment system for the operating costs of acute care hospital inpatient stays, effective with hospital cost reporting periods beginning on or after October 1, 1983.

Although most hospital inpatient services became subject to the acute care hospital inpatient prospective payment system, certain specialty hospitals are excluded from that system. These hospitals included long-term care hospitals (LTCHs), rehabilitation and psychiatric hospitals, rehabilitation and psychiatric units of acute care hospitals, and children's hospitals. Cancer hospitals were added to the list of excluded hospitals by section 6004(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239).

Subsequent to the implementation of the acute care hospital inpatient prospective payment system, both the number of excluded hospitals and Medicare payments to these hospitals grew rapidly. Consequently, Congress enacted various provisions in the Balanced Budget Act (BBA) (Pub. L. 105–33), the Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554) to provide for the development and implementation of a prospective payment system for the following excluded hospitals:

- Rehabilitation hospitals (including units in acute care hospitals).
- Psychiatric hospitals (including units in acute care hospitals.
- LTCHs.

Section 4422 of the BBA mandated that the Secretary develop a legislative proposal, for presentation to the Congress by October 1, 1999, for a case-mix adjusted LTCH prospective payment system under the Medicare program. This system was to include an adequate patient classification system that reflects the differences in patient resource use and costs among LTCHs. Furthermore, in developing the legislative proposal for the prospective payment system, the Secretary was to consider several payment methodologies, including the feasibility of an expansion of the acute care hospital inpatient prospective payment system (diagnosis-related group (DRG) based system) established under section 1886(d) of the Act.

In the interim, section 4414 of the BBA imposed national limits (or caps) on hospital-specific target amounts (that is, the annual per discharge limit) for these excluded hospitals until cost reporting periods beginning on or after October 1, 2002. At the same time that the Congress modified the payment system based on limits on target amounts, it also included a provision in the BBA to require the Secretary to develop a legislative proposal for establishing a prospective payment system for LTCHs.

With the passage of the BBRA in November 1999, in section 122, the Congress refined some policies of the BBA before the implementation of the prospective payment systems for LTCHs and psychiatric hospitals and units. Section 123 of the BBRA further requires that the Secretary develop a per discharge, DRG-based system for LTCHs and requires that this system be described in a report to the Congress by

October 1, 2001, and be in place by October 1, 2002. Section 307(b)(1) of BIPA modified the BBRA's requirements for the prospective payment system for LTCHs by mandating that the Secretary'' * * * shall examine the feasibility and the impact of basing payment under such a system on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of long-term care hospital patients as well as the use of the most recently available hospital discharge data.'' Furthermore, section 307(b)(1) of BIPA provided that the Secretary'' * * * shall examine and may provide for appropriate adjustments to the long-term hospital prospective payment system, including adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment * * *.'' In the event that the Secretary is unable to implement the LTCH prospective payment system by October 1, 2002, section 307(b)(2) of BIPA requires the Secretary to implement a prospective payment system using the existing hospital DRGs, modified when feasible, to account for resource use by LTCHs.

(We note that, even though the LTCH prospective payment system in this final rule is effective for cost reporting periods that begin on or after October 1, 2002, we will not have computer system changes in place that are necessary to accommodate claims processing and payment under the prospective payment system until after January 1, 2003. As of October 16, 2002, a LTCH that is required to comply with the HIPAA Administrative Simplification Standards must submit electronic claims to the fiscal intermediary in compliance with 42 CFR 162.1002 and 45 CFR 162.1102, using the ICD–9-CM coding system, unless the LTCH obtains an extension in compliance with the Administrative Compliance Act (Pub. L. 107–105). Beginning October 16, 2003, LTCHs that obtained an extension and that are required to comply with the HIPAA Administrative Simplification Standards must start submitting electronic claims in compliance with the HIPPA regulations cited above, among others. We intend that, as of January 1, 2003, the fiscal intermediary will reconcile the payment amounts that have been made to LTCHs for all covered inpatient hospital services furnished to Medicare beneficiaries from cost reporting periods that begin on or after October 1, 2002 until the date of the systems implementation, with the amounts that are payable under the LTCH prospective payment methodology. Since LTCHs will receive payment under the LTCH prospective payment system at the start of their first cost reporting periods that begin on or after October 1, 2002, only those LTCHs with cost reporting periods starting October 1, 2002 until the date of the systems implementation will experience the payment reconciliation necessitated by this differential period. We also emphasize that the claims submission procedure of using ICD–9–CM codes will not change following the systems implementation of the LTCH prospective payment system. A detailed discussion on the operational procedures for this differential period appears in sections VIII.H. and X.N. of this final rule.)

II. Publication of Proposed Rulemaking

On March 22, 2002, we published a proposed rule in the **Federal Register** (67 FR 13416) that set forth the proposed Medicare prospective payment system for LTCHs as authorized under Public Law 106–113 and Public Law 106–554. In accordance with the requirements of section 123 of Public Law 106–113, as modified by section 307(b) of Public Law 106–554, we proposed to implement a prospective payment system for LTCHs to replace the current reasonable cost-based payment system under TEFRA. The proposed prospective payment system used information from LTCH patient records to classify patients into distinct DRGs based on clinical characteristics and expected resource needs. Separate payments would be calculated for each DRG with additional adjustments applied.

In the proposed rule and in this final rule, we discuss the development, policies, and implementation of the LTCH prospective payment system. These discussions in this final rule include the following:

- An overview of the current payment system for LTCHs (section III.).
- A discussion of the statutory requirements for developing and implementing a LTCH prospective payment system (section IV.).
- A discussion of research findings on LTCHs (section V.).
- A detailed discussion of the LTCH prospective payment system, including the patient classification system (section IX.), relative weights (section X.A.), payment rates (section X.B.), additional payments (section X.C.), and the budget-neutrality requirements (section X.F.) mandated by section 123 of Pub. L. 106–113.
- An analysis of the estimated impact of the LTCH prospective payment system on the Federal budget and LTCHs (section XII.).
- Changes to existing regulations and the establishment of regulations in 42 CFR Chapter IV to implement the LTCH prospective payment system.

We designed the prospective payment system for LTCHs with the following objectives:

- To base the prospective payment system on an analysis of the best information and data available.
- To establish a payment model using our experience in implementing other prospective payment systems.
- To provide incentives to control costs and to furnish services as efficiently as possible.
- To base payment on clinically coherent categories and to appropriately reflect average resource needs across different categories.
- To minimize opportunities and incentives for inappropriately maximizing Medicare payments.
- To establish a system that is beneficiary centered by formulating procedures for quality monitoring.
- To develop a system that is administratively feasible.

We received a total of 52 timely items of correspondence containing multiple comments on the proposed rule. The major issues addressed by the commenters included: the criteria for determining the 25-day average length of stay for LTCHs; payment adjustments for area wage differences; payments for special cases of short stays and interrupted stays; and data sources used to compute the prospective payments. Summaries of the public comments received and our responses to those comments are set forth below under the appropriate subject heading.

III. Overview of the Current Payment System for LTCHs

A. Exclusion of Certain Facilities From the Acute Care Hospital Inpatient Prospective Payment System

Although payment for operating costs of most hospital inpatient services became subject to a prospective payment system under the Social Security Amendments of 1983 (Pub. L. 98–21), which added section 1886(d) to the Act, certain types of hospitals and units were excluded from that payment system. Section 1886(d)(1)(B) of the Act lists the following classes of excluded hospitals:

- Psychiatric hospitals and units.
- Rehabilitation hospitals and units.
- LTCHs.
- Children's hospitals.

Effective with cost reporting periods beginning on or after October 1, 1989,

cancer hospitals were added to this list by section 6004(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239).

The acute care hospital inpatient prospective payment system is a system of average-based payments that assumes that some patient stays will consume more resources than the typical stay, while others will demand fewer resources. Therefore, an efficiently operated hospital should be able to deliver care to its Medicare patients for an overall cost that is at or below the amount paid under the acute care hospital inpatient prospective payment system. In a report to the Congress, ''Hospital Prospective Payment for Medicare (1982),'' the Department of Health and Human Services stated that the ''467 DRGs were not designed to account for these types of treatment'' found in the four classes of excluded hospitals, and noted that ''including these hospitals will result in criticism and their application to these hospitals would be inaccurate and unfair.''

The Congress excluded these hospitals from the acute care hospital inpatient prospective payment system because they typically treated cases that involved stays that were, on average, longer or more costly than would be predicted by the DRG system. The legislative history of the 1983 Social Security Amendments stated that the ''DRG system was developed for short-term acute care general hospitals and as currently constructed does not adequately take into account special circumstances of diagnoses requiring long stays.'' (Report of the Committee on Ways and Means, U.S. House of Representatives, to Accompany HR 1900, H.R. Rept. No. 98–25, at 141 (1983)). Therefore, these hospitals could be systemically underpaid if the same DRG system were applied to them.

Following enactment in April 1983 of the Social Security Amendments of 1983, we implemented the acute care hospital inpatient prospective payment system on October 1, 1983, including the initial publication in the **Federal Register** of the rules and regulations for the acute care hospital inpatient prospective payment system: the September 1, 1983 interim final rule (48 FR 39752) and the January 3, 1984 final rule (49 FR 234). Updates and modifications of the regulations have been published annually in the **Federal Register**. We also developed payment policy for hospitals that were seeking to be excluded from the acute care hospital inpatient prospective payment system. The regulations concerning exclusion of LTCHs from the acute care hospital inpatient prospective payment system are found in 42 CFR Part 412, Subpart B.

B. Requirements for LTCHs to be Excluded From the Acute Care Hospital Inpatient Prospective Payment System

Under section 1886(d)(1)(B) of the Act, the prospective payment system for hospital inpatient operating costs set forth in section 1886(d) of the Act does not apply to several specified types of hospitals, including LTCHs, which are defined in section 1886(d)(1)(B)(iv)(I) of the Act as ''* * * a hospital which has an average inpatient length of stay (as determined by the Secretary) of greater than 25 days.'' Section 4417(b)(1)(B) of the BBA added section 1886(d)(1)(B)(iv)(II) to the Act, which also provides another definition of LTCHs: specifically, a hospital that was first excluded in 1986 that has an average inpatient length of stay (as determined by the Secretary) of greater than 20 days and has 80 percent or more of its annual Medicare inpatient discharges with a principal diagnosis of neoplastic disease in the 12-month cost reporting period ending in FY 1997.

Implementing regulations at § 405.471(c)(5) (now § 412.23(e)) require the facility to have a provider agreement with Medicare to participate as a hospital, and an average inpatient length of stay greater than 25 days as calculated under the following formula: the average length of stay is calculated by dividing the total number of inpatient days (excluding leave of absence or pass days) for all patients by the total number of discharges for the hospital's most recent complete cost reporting period. The determination of whether or not a hospital qualifies as an LTCH is based on the hospital's most recently filed cost report, or if a change in the hospital's average length of stay is indicated, by the same method for the immediately preceding 6-month period (§ 412.23(e)(3)). (Requirements for hospitals seeking classification as LTCHs that have undergone a change in ownership, as described in § 489.18, are set forth in § 412.23(e)(3)(iii).)

C. Payment System Requirements Prior to the BBA

Hospitals that are excluded from the acute care hospital inpatient prospective payment system under section 1886(d)(1)(B) of the Act are paid for inpatient operating costs under the provisions of Public Law 97–248 (TEFRA) that are found in section 1886(b) of the Act and implemented in regulations at 42 CFR part 413. Public Law 97–248 established payments based on hospital-specific limits for inpatient operating costs. A ceiling on payments to hospitals excluded from the acute care hospital inpatient prospective payment system is determined by calculating the product of a facility's base year costs (the year on which its target reimbursement limit is based) per discharge, updated to the current year by a rate-of-increase percentage, and multiplied by the number of total current year discharges. (A detailed discussion of target amount payment limits under Public Law 97–248 can be found in the September 1, 1983 final rule published in the **Federal Register** (48 FR 39746).)

The base year for a facility varied, depending on when the facility was initially determined to be a prospective payment system-excluded provider. The base year for facilities that were established before the implementation of Public Law 97–248 was 1982, when Public Law 97–248 was enacted. For facilities established after implementation of Public Law 97–248 (section 1886(b) of the Act), we originally provided in the regulations for payment to these facilities for their full ''reasonable'' costs for their first 3 cost reporting years, and allowed the facilities to choose which of those years would be used in the future to determine their target limit. This ''new provider'' period was later shortened to 2 cost reporting years (§ 413.40(f)(1) (1992)), and we designated the second cost reporting year as the cost reporting year used to determine the hospital's per discharge target amount.

Excluded facilities whose costs were below their target amounts received bonus payments equal to the lesser of half of the difference between costs and the target amount, up to a maximum of 5 percent of the target amount, or the hospital's costs. For excluded facilities whose costs exceeded their target amounts, Medicare provided relief payments equal to half of the amount by which the hospital's costs exceeded the target amount up to 10 percent of the target amount. Excluded facilities that experienced a more significant increase in patient acuity could also apply for an additional amount under the regulations for Medicare exception payments (§ 413.40(d)).

D. Effects of the Current Payment System

Use of postacute care services has grown rapidly in recent years since the implementation of the acute care hospital inpatient prospective payment system. The average length of stay in acute care hospitals has decreased, and patients are increasingly being discharged to postacute care settings such as LTCHs, skilled nursing facilities

(SNFs), home health agencies (HHAs), and inpatient rehabilitation facilities (IRFs) to complete their course of treatment. The increased use of postacute care providers, including hospitals excluded from the acute care hospital inpatient prospective payment system, has resulted in the rapid growth in Medicare payments to these hospitals in recent years. In addition, there has been a significant increase in the number of LTCHs. In 1991, there were 91 LTCHs; in 1994, 155 LTCHs; in 1999, 225 LTCHs; in December 2000, 252 LTCHs; and in November 2001, 270 LTCHs. Payments to postacute care providers were among the fastest growing providers under the Medicare program throughout the 1990s. (Prospective Payment Assessment Commission (ProPAC) June 1996 Report to Congress, p. 91.)

LTCHs have experienced faster growth in the number of facilities and Medicare program payments than any other category of prospective payment system-excluded provider. In its June 1996 Report to Congress, ProPAC found that, from 1990 to 1993, payment to rehabilitation facilities rose about 25 percent per year, while payments to LTCHs increased 33 percent annually (p. 92). ProPAC also found that, from 1991 to 1995, the number of rehabilitation facilities increased 21 percent (from 852 in 1991 to 1,029 in 1995), while the number of LTCHs increased 93 percent (from 91 in 1991 to 176 in 1995) (p. 93). The best available Hospital Cost Report Information System (HCRIS) data indicate $398 million in payments for inpatient operating services to 105 LTCHs in FY 1993 and $1.05 billion in payments for inpatient operating services to 206 LTCHs in FY 1998. This amount represents more than a 96-percent increase in the number of LTCHs and a 164-percent increase in payments to LTCHs in 5 years.

In its March 1999 Report to Congress, the Medicare Payment Advisory Commission (MedPAC) (formerly ProPAC) stated that: ''[The] TEFRA system has remained in effect longer than expected partly because of difficulties in accounting for the variation in resource use across patients in exempted facilities. The unintended consequences of sustaining that system have been a steady growth in the number of prospective payment system-exempt facilities and a substantial payment inequity between older and newer facilities. In particular, the payment system encouraged new exempt facilities to maximize their costs in the base year to establish high cost limits. Once subject to its relatively high limit, a recent entrant could reduce its costs below its limit, resulting in reimbursement of its full costs plus bonus payment. By contrast, facilities that existed before they became subject to TEFRA could not influence their cost limits. Given the relatively low limits of older facilities, they are more likely to incur costs above their limits and thus receive payments less than their costs.'' (p. 72)

To address concerns regarding the historical growth in payments and the disparity in payments to existing and newly excluded hospitals and units, the BBA mandated several changes to the existing payment system. These changes are outlined in section IV. of this preamble.

E. Research and Discussion of a Prospective Payment System for LTCHs Prior to the BBA

Section 603(a)(2)(C)(ii) of Public Law 98–21 required the Secretary to include the results of research studies on whether and how excluded hospitals and units can be paid on a prospective basis, in the 1985 Report to Congress on the Impact of Prospective Payment Methodology. HCFA (now CMS) undertook and funded a wide range of research projects that resulted in 1987 in a Report to Congress entitled ''Developing a Prospective Payment System for Excluded Hospitals.'' In that report, the Secretary presented an examination of the then current state of the four classes of excluded hospitals and units and offered recommendations for the development of a prospective payment system. ''Long-term'' or ''chronic disease'' hospitals, the report noted, ''are the least understood of the excluded hospital types'' (p. 3–51).

The following information was clear—there were a relatively small number of facilities (94 at that time); LTCHs were not dispersed throughout the country and, therefore, potential long-term care patients were receiving necessary care elsewhere; LTCHs, as generally defined by the greater than 25-day average length of stay, constituted a diverse set that closely resembled other hospitals, both included (acute care) and excluded (psychiatric, rehabilitation, and children's) under the acute care hospital inpatient prospective payment system (pp. 3–51 through 3–63). The Report concluded with the following discussion: ''Because this class of hospitals treats a very heterogeneous patient population and does not share a common set of facility characteristics, the development of a separate classification system for prospective payment purposes would appear to be both infeasible and undesirable. At the same time, as part of HCFA's [now CMS'] impact analysis, we were investigating the feasibility of including LTCHs under the current prospective payment system, where their cases would be expected to be paid predominantly under the prospective payment system outlier policy.'' (pp. 3–63 through 3–64)

The 1987 report further noted that present and future research on LTCHs would focus on acquiring a broader understanding of LTCHs, long-term care patients, and other treatment settings and on the preliminary financial impact of a prospective payment system on both LTCHs and the Medicare system. An initial inquiry was also planned ''into the role of those hospitals as a component of the continuum of care between acute care hospitals and skilled nursing facilities, as a general first step in developing a classification system for patients in these facilities * * *'' (p. 3–54).

ProPAC's March 1996 Report to Congress endorsed the concept of prospective payment systems for all postacute services, emphasizing consistent payment methods across all classes of facilities in order to encourage provider efficiency (p. 75). ProPAC's extensive analysis of ''patients using postacute care providers and in these providers' treatment patterns'' based on FY 1994 data discussed in the June 1996 Report to Congress, concluded that ''[a]lthough there was significant overlap in the hospital assigned DRGs across settings, other patient characteristics, such as medical complexity or functional status, may influence which patients use a particular site'' (p. 110).

In ProPAC's March 1, 1997 report, ProPAC's Recommendation 33, entitled ''Coordinating Post-Acute Care Provider Payment Methods,'' stated that ''the Commission urges the Congress and the Secretary to consider the overlap in services and beneficiaries across postacute care providers as they modify Medicare payment policies'' (p. 60).

The passage of Public Law 105–33 (the BBA) provided for the establishment of separate and distinct prospective payment systems for postacute care providers: SNFs (section 4432(a)), IRFs (section 4421), and HHAs (section 4603(b)). In addition, the Congress directed the Secretary to develop a legislative proposal to pay LTCHs prospectively as well (section 4422).

IV. Requirements of the BBA, BBRA, and BIPA for LTCHs

A. Provisions of the Current Payment System

1. BBA

The BBA amendments to section 1886(b) of the Act significantly altered the payment provisions for excluded hospitals and units and also added other qualifying criteria for certain hospitals excluded from the acute care hospital inpatient prospective payment system (sections 4411 to 4419). Provisions of these amendments that related to the current payment system were explained in detail and implemented in the acute care hospital inpatient prospective payment system final rule published in the **Federal Register** on August 29, 1997 (62 FR 45966).

Section 4411 of the BBA amended section 1886(b)(3)(B) of the Act and restricted the rate-of-increase percentages that are applied to each provider's target amount so that excluded hospitals and units experiencing lower inpatient operating costs relative to their target amounts receive lower rates of increase.

Section 4412 of the BBA amended section 1886(g) of the Act to establish a 15-percent reduction in capital payments for excluded psychiatric and rehabilitation hospitals and units and LTCHs, for portions of cost reporting periods occurring during the period of October 1, 1997, through September 30, 2002.

Section 4413(b) of the BBA amended section 1886(b)(3) of the Act to permit certain LTCHs to elect a rebasing of the target amount for the 12-month cost reporting period beginning during FY 1996.

Section 4414 of the BBA amended section 1886(b)(3) of the Act to establish caps on the target amounts for excluded hospitals and units at the 75th percentile of target amounts for similar facilities for cost reporting periods beginning on or after October 1, 1997, through September 30, 2002. These caps on the target amounts apply only to psychiatric and rehabilitation hospitals and units and LTCHs. Payments for these excluded hospitals and units are based on the lesser of a provider's cost per discharge or its hospital-specific cost per discharge, subject to this cap.

Section 4415 of the BBA amended section 1886(b)(1) of the Act by revising the percentage factors used to determine the amount of bonus and relief payments, and establishing continuous improvement bonus payments for cost reporting periods beginning on or after October 1, 1997 for hospitals and units excluded from the acute care hospital inpatient prospective payment system that meet specified criteria. If a hospital is eligible for the continuous improvement bonus, the continuous improvement bonus payment is equal to the lesser of: (1) 50 percent of the amount by which operating costs are less than expected costs; or (2) 1 percent of the target amount.

Sections 4416 and 4419 of the BBA amended section 1886(b) of the Act to establish a new framework for payments for new excluded providers. Section 4416 added a new section 1886(b)(7) to the Act that established a new statutory methodology for new psychiatric and rehabilitation hospitals and units and LTCHs. Before this change, new hospitals excluded from the acute care hospital inpatient prospective payment system were exempted from the target amount per discharge ceiling until the end of the first cost reporting period ending at least 2 years after they accepted their first patient. This new provider ''exemption'' was eliminated from all classes of excluded providers except children's hospitals for cost reporting periods beginning on or after October 1, 1997, by section 4419(a) of the BBA. Under section 4416, payment to these new excluded providers for their first two cost reporting periods is limited to the lesser of the operating costs per case, or 110 percent of the national median of target amounts, as adjusted for differences in wage levels, for the same class of hospital for cost reporting periods ending during FY 1996, updated to the applicable period.

It is important to note that before enactment of the BBA, the payment provisions for excluded hospitals and units applied consistently to all classes of excluded providers (that is, psychiatric, rehabilitation, long-term care, children's, and cancer). However, effective for cost reporting periods beginning on or after October 1, 1997, there are specific payment provisions for certain classes of excluded providers, as well as modifications for all excluded providers.

Section 4417 of the BBA specified that a hospital that was classified by the Secretary on or before September 30, 1995, as an excluded LTCH must continue to be so classified, notwithstanding that it is located in the same building, or on the same campus, as another hospital.

Section 4418 of the BBA amended section 1886(d)(1)(B)(v) of the Act, providing an additional category of hospitals that could qualify as cancer hospitals for purposes of exclusion from the acute care hospital inpatient prospective payment system.

2. BBRA

With the enactment of the BBRA of 1999, the Congress refined some of the policies mandated by the BBA for hospitals excluded from the acute care hospital inpatient prospective payment system. The provisions of the BBRA, which amended section 1886(b)(3)(H) of the Act relating to the current payment system for excluded hospitals, were explained in detail and implemented in the acute care hospital inpatient prospective payment system interim final rule published in the **Federal Register** on August 1, 2000 (65 FR 47026) and in the acute care hospital inpatient prospective payment system final rule also published on August 1, 2000 (65 FR 47054).

Section 4414 of the BBA provided for caps on target amounts for excluded hospitals and units for cost reporting periods beginning on or after October 1, 1997. Section 121 of the BBRA amended section 1886(b)(3)(H) of the Act to provide for an appropriate wage adjustment to these caps on the target amounts for existing psychiatric and rehabilitation hospitals and units and LTCHs, effective for cost reporting periods beginning on or after October 1, 1999 through September 30, 2002.

Section 122 of the BBRA provided for an increase in the continuous improvement bonus for eligible LTCHs and psychiatric hospitals and units for cost reporting periods beginning on or after October 1, 2000 and before September 30, 2002.

3. BIPA

Two provisions of the BIPA that amended section 1886(b)(3) of the Act were directed at LTCHs. Section 307(a) of the BIPA provided for a 2-percent increase to the wage-adjusted 75th percentile cap on the target amount for existing LTCHs, effective for cost reporting periods beginning during FY 2001. Section 307(a) of the BIPA also provided a 25-percent increase to the hospital-specific target amounts for existing LTCHs for cost reporting periods beginning in FY 2001, subject to the wage-adjusted national cap.

B. Provisions for a LTCH Prospective Payment System

1. BBA

In section 4422 of the BBA, the Congress mandated that the Secretary develop a legislative proposal for a case-mix adjusted prospective payment system for LTCHs under the Medicare program, for submission by October 1999 based on consideration of several payment methodologies, including the feasibility of expanding the current

DRGs and the prospective payment system currently in place for acute care hospitals.

2. BBRA

Section 123 of the BBRA specifically requires that the prospective payment system for LTCHs be designed as a per discharge system with a DRG-based patient classification system that reflects the differences in patient resources and costs in LTCHs while maintaining budget neutrality. Section 123 also requires that a report be submitted to the Congress describing the system design of the mandated LTCH prospective payment system no later than October 1, 2001, and that the system be implemented for cost reporting periods beginning on or after October 1, 2002.

3. BIPA

The BIPA reiterated the dates of implementation of the LTCH prospective payment system set forth in the BBRA. Section 307(b)(1) of the BIPA also directs the Secretary to examine the following specific payment adjustments: adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment. Furthermore, if the Secretary is unable to implement the prospective payment system by October 1, 2002, section 307(b)(2) of the BIPA mandates that a default LTCH prospective payment system be implemented, based on existing DRGs, modified where feasible to account for the specific resource use of long-term care patients.

V. Research and Data Supporting the Establishment of the LTCH Prospective Payment System

A. Legislative Requirements

Section 4422 of the BBA required us to formulate a legislative proposal on the development of a prospective payment system for LTCHs for submission to the Congress by October 1, 1999. To prepare for this proposal, we awarded a contract to The Urban Institute (Urban) following the enactment of the BBA for a multifaceted analysis of LTCHs, including a description of facilities and patients, as well as exploration of a variety of classification and payment system options.

In section 123(a) of the BBRA, the Congress mandated a per discharge, DRG-based model for the prospective payment system for LTCHs. Our basic objective remained unchanged—to arrive at a clearer understanding of the universe of LTCHs in relation to facility characteristics, beneficiary utilization, and beneficiary characteristics such as diagnoses, treatment, and discharge patterns.

Under the terms of our original contract with Urban, 3M Health Information Systems (3M) was subcontracted to provide an analysis and assessment of alternative classification systems for use in LTCHs in keeping with variables such as treatment patterns, patient demographics, and diagnoses and procedure codes for patients at LTCHs and acute care hospitals.

After the enactment of section 123 of the BBRA, we instructed 3M to limit its analyses to several DRG-driven classification systems, using the database constructed by Urban describing LTCHs, patients at LTCHs, and patients with the same diagnoses as LTCH patients treated in other facilities. We also contracted with 3M to develop and analyze the data necessary for us to design and develop the Medicare LTCH prospective payment system based on DRGs.

B. Description of Sources of Research Data

The records for all Medicare hospital inpatient discharges (including discharges for LTCHs) are contained in the Medicare provider analysis and review file (MedPAR), which includes patient demographics (age, gender, race, and residence zip code), clinical characteristics (diagnoses and procedures), and hospitalization characteristics. (Beneficiary data were encrypted to prevent the identification of specific Medicare beneficiaries.) The Medicare cost report data constitute the HCRIS, and includes information on facility characteristics, utilization data, and cost and charge data by cost center.

The 1997 Online Survey Certification and Reporting (OSCAR) system data provided information from the State survey and certification process to identify and characterize providers that participate in Medicare and Medicaid and include a list of all hospitals that were designated as LTCHs by Medicare. OSCAR data included the number of employees of various types and the number of different types of beds and care units, as well as variables on certification date, type of control, geographic region, and hospital size.

C. The Universe of LTCHs

1. Background Issues

LTCHs typically furnish extended medical and rehabilitative care for patients who are clinically complex and have multiple acute or chronic conditions. Generally, Medicare patients in LTCHs have been transferred from acute care hospitals and receive a range of ''postacute care'' services at LTCHs, including comprehensive rehabilitation, cancer treatment, head trauma treatment, and pain management. (MedPAC March 1999 Report to Congress, p. 95.) A LTCH must be certified as an acute care hospital that meets criteria set forth in section 1861(e) of the Act in order to participate as a hospital in the Medicare program. Generally, under Medicare, hospitals are paid as LTCHs if they have an inpatient average length of stay greater than 25 days.

LTCHs are a heterogeneous group of facilities ranging from old tuberculosis and chronic disease hospitals to newer facilities designed primarily to care for ventilator-dependent patients. They are unevenly distributed across the United States, with one-third (72 of 203 in 1997) located in Massachusetts, Texas, and Louisiana. As of 1997, 203 facilities were determined by Medicare to be LTCHs; by early 2000, 239 facilities were determined by Medicare to be LTCHs; and as of November 2001, OSCAR had data on 270 LTCHs.

LTCHs constitute a relatively small provider group in the Medicare program and have not been widely studied. Only limited information has been published about their characteristics in terms of types of patients served and resources used. As stated earlier in section V.A. of this preamble, the primary goal of the initial research contract with Urban was to increase our knowledge about LTCHs and their patients. In addition to describing the providers and patients, the study was expected to provide insight into the ways in which LTCHs differ from other Medicare postacute care providers. In the following summary and tables, we provide a description of Urban's findings that formed the basis for the design of the prospective payment system for LTCHs presented in the March 2002 proposed rule and in this final rule.

2. General Medicare Policies

Inpatient stays at LTCHs are covered under the Medicare Part A hospital benefit and include room and board, medical and nursing services, laboratory tests, X-ray, pharmaceuticals, supplies, and other diagnostic or therapeutic services (§§ 409.10 and 412.50). LTCHs can offer specialized services (for example, physical rehabilitation or ventilator-dependent care) or can provide more generalized services (for example, chronic disease care).

Hospital services are covered for up to 90 days during a Medicare-defined

''benefit period,'' which is a period that begins with admission of a Medicare beneficiary as an inpatient to an acute care or other hospital and ends when the beneficiary has spent 60 consecutive days outside of an inpatient facility (§ 409.60). There are 60 additional covered lifetime reserve days that may be used over a beneficiary's lifetime. One inpatient deductible payment ($792 in calendar year 2002) is required for each benefit period, so a beneficiary generally does not have to make a new deductible payment for a LTCH stay unless the LTCH stay is not preceded by another hospital stay. However, a beneficiary with a long LTCH stay is subject to a coinsurance payment ($198 in calendar year 2002) for days 61 through 90 of hospital use during a benefit period. For the lifetime reserve days, a Medicare beneficiary is subject to a daily coinsurance amount ($396 in calendar year 2002) (§ 409.61).

LTCHs must meet State licensure requirements for acute care hospitals and must have a provider agreement with Medicare in order to receive Medicare payment. Fiscal intermediaries verify that LTCHs meet the required average length of stay of greater than 25 days.

3. Exclusion From the Acute Care Hospital Inpatient Prospective Payment System

As discussed more fully in section III.B. of this preamble, LTCHs were excluded from the FY 1984 implementation of the acute care hospital inpatient prospective payment system and continued to be paid based on their cost per discharge, subject to per discharge limits.

4. Geographic Distribution

Overall, 203 LTCHs filed Medicare claims in 1997. This was the data set used by Urban for its analysis of the universe of LTCHs that formed the basis for policies we proposed in our proposed rule on March 22, 2002 (67 FR 13416). This number translates into an average of approximately one facility per 200,000 Medicare enrollees. As can be seen in Chart 1, LTCHs were not (and are still not) distributed across all States in proportion to the number of Medicare enrollees in those States. They were unevenly distributed across the United States, with one-third (72 of 203) located in Massachusetts, Texas, and Louisiana. These three States together accounted for 36 percent of the LTCHs, but only fewer than 10 percent of Medicare enrollees. Furthermore, 13 small States have no LTCHs, although they accounted for approximately 7 percent of Medicare enrollees. In contrast, the three largest Medicare States (California, Florida, and New York) accounted for 24.1 percent of Medicare enrollees together, but only 13.8 percent of LTCHs.

CHART 1.—PERCENTAGE DISTRIBUTION OF NUMBER OF LONG-TERM CARE HOSPITALS (LTCHS), MEDICARE ENROLLEES, AND CERTIFIED BEDS, BY STATE, 1997

State	Number of LTCHs	Percent of LTCHs	Number of medicare enrollees	Percent of medicare enrollees	Number of certified beds	Percent of certified beds
Alabama	1	0.5	696,586	1.8	191	1.0
Alaska	0	0.0	38,570	0.1	0	0.0
Arizona	4	2.0	667,226	1.7	187	1.0
Arkansas	0	0.0	453,195	1.1	0	0.0
California	12	5.9	3,920,674	9.9	1,304	7.1
Colorado	4	2.0	464,299	1.2	277	1.5
Connecticut	4	2.0	531,805	1.3	716	3.9
Delaware	0	0.0	111,171	0.3	0	0.0
District of Columbia	1	0.5	80,028	0.2	23	0.1
Florida	11	5.4	2,853,420	7.2	805	4.4
Georgia	6	3.0	915,577	2.3	557	3.0
Hawaii	1	0.5	163,217	0.4	13	0.1
Idaho	0	0.0	163,303	0.4	0	0.0
Illinois	5	2.5	1,701,123	4.3	703	3.8
Indiana	11	5.4	877,656	2.2	434	2.4
Iowa	0	0.0	498,288	1.3	0	0.0
Kansas	3	1.5	406,752	1.0	74	0.4
Kentucky	1	0.5	633,802	1.6	337	1.8
Louisiana	19	9.4	622,805	1.6	1,288	7.0
Maine	0	0.0	218,265	0.6	0	0.0
Maryland	4	2.0	651,710	1.7	465	2.5
Massachusetts	17	8.4	991,641	2.5	3,077	16.8
Michigan	3	1.5	1,435,420	3.6	280	1.5
Minnesota	2	1.0	669,708	1.7	313	1.7
Mississippi	2	1.0	428,729	1.1	65	0.4
Missouri	3	1.5	888,959	2.3	317	1.7
Montana	0	0.0	139,392	0.4	0	0.0
Nebraska	1	0.5	263,287	0.7	25	0.1
Nevada	3	1.5	225,152	0.6	106	0.6
New Hampshire	0	0.0	170,031	0.4	0	0.0
New Jersey	3	1.5	1,239,890	3.1	212	1.2
New Mexico	2	1.0	231,517	0.6	86	0.5
New York	5	2.5	2,780,994	7.0	1,262	6.9
North Carolina	1	0.5	1,129,329	2.9	59	0.3
North Dakota	0	0.0	107,628	0.3	0	0.0
Ohio	7	3.4	1,766,266	4.5	653	3.6
Oklahoma	8	3.9	523,358	1.3	294	1.6
Oregon	0	0.0	500,035	1.3	0	0.0
Pennsylvania	6	3.0	2,183,850	5.5	412	2.3
Rhode Island	1	0.5	177,247	0.4	700	3.8
South Carolina	2	1.0	562,732	1.4	0	0.0
South Dakota	0	0.0	123,401	0.3	211	1.2
Tennessee	6	3.0	838,357	2.1	210	1.1
Texas	36	17.7	2,275,673	5.8	1,818	9.9
Utah	1	0.5	204,525	0.5	39	0.2
Vermont	0	0.0	89,821	0.2	0	0.0
Virginia	3	1.5	893,602	2.3	664	3.6
Washington	2	1.0	742,589	1.9	97	0.5
West Virginia	0	0.0	349,684	0.9	0	0.0
Wisconsin	1	0.5	806,951	2.0	34	0.2
Wyoming	1	0.5	65,699	0.2	3	0.0
Total	195	100.00	36,322,068	100.00	18,311	100.00

Source: 1997 Online Survey Certification and Reporting System (OSCAR).

Although the distribution of certified beds generally tracked the distribution of LTCHs across States, there is not always a direct relationship between the number of LTCHs and the bed capacity in a given State. For instance, Massachusetts had only 8.4 percent of LTCHs, but 16.8 percent of Medicare-certified beds. In contrast, Texas had 17.7 percent of LTCHs, but only 9.9 percent of the certified beds.

5. Characteristics by Date of Medicare Participation

The OSCAR system provided data captured by the State survey and certification process that can be used to identify and characterize providers participating in Medicare and Medicaid. The following analyses were based on LTCHs for which data were available. Eight facilities, which accounted for only 1 percent of all LTCH stays and 1.3 percent of certified beds, were excluded from the analysis since 1997 OSCAR records were not available for these facilities.

Given the known payment variations for old and new facilities that were excluded facilities paid under the target amount methodology, we divided the LTCHs by age (the date of the LTCH's first Medicare participation, as reported by OSCAR) to gain a sense of the variation among the existing LTCHs in 1997. A strong correlation was found between the age of a LTCH and other key characteristics, such as location and ownership control, as well as operating costs and Medicare payments. For analytical purposes, therefore, the total sample of LTCHs was stratified based on age (''old,'' ''middle,'' or ''new''). Of the 195 LTCHs in OSCAR in 1997, 20 percent were in existence before the acute care hospital inpatient prospective payment system and the acute care hospital inpatient prospective payment system exclusions went into effect in October 1983 (old LTCHs); 30 percent were determined to be LTCHs between October 1983 and September 1993 (middle LTCHs); and 50 percent were determined to be LTCHs between October 1993 and September 1997 (new LTCHs). This pattern is consistent with reports of the large growth in the number of LTCHs in recent years. (As of November 2001, OSCAR had data on 270 LTCHs, which indicate that the growth has continued.)

Old LTCHs were generally located in the northeast region of the United States, while newer LTCHs are typically located in the southern region. Most notably, the ownership of the LTCHs that began Medicare participation before and after the implementation of the acute care hospital inpatient prospective payment system was quite different. Old LTCHs were either government controlled (about 63 percent) or nonprofit (about 37 percent). In contrast, one-half of the LTCHs that began participation in Medicare between 1983 and 1993 and two-thirds of those that began participation in Medicare in FY 1994 or later were proprietary facilities. Virtually no new LTCHs were government controlled.

6. Hospitals-Within-Hospitals and Satellite Facilities

The Medicare statute does not contemplate the recognition of ''LTCH units'' of prospective payment system acute care hospitals; the statute does reference rehabilitation and psychiatric units. Long-term care units of prospective payment system hospitals are not allowed in part because of the concern that transfers of acute care patients into the LTCH units could inappropriately maximize prospective payments under the acute care hospital inpatient prospective payment system. The presence of a long-term care ''unit'', excluded from the acute care hospital inpatient prospective payment system and co-located in an acute care hospital, could enable the acute care hospital to shift patients to the long-term care ''unit'' without completing the full course of treatment. These patient transfers could result in inappropriate payments under Medicare since the acute care hospital would make money in those cases where it received a full DRG payment without providing the full course of treatment to the beneficiary and could avoid losing any money for other more costly patients by prematurely discharging them to the LTCH. Since payments to hospitals under the acute care hospital inpatient prospective payment system were based on hospital costs that included the costs of patients with longer lengths of stay, such a patient shift would result in an ''overpayment'' to the acute care hospital and the LTCH would receive an additional payment for that same patient.

Nonetheless, in the mid-1990s, of the roughly 150 LTCHs in existence at the time, about 12 recently established LTCHs were, in fact, LTCHs located in the buildings or on the campuses of acute care hospitals. In order to prevent the shifting of costs within the Medicare payment system that would result from inappropriate transfers between the inpatient acute care hospital and the LTCH located within the acute care hospital, we have implemented additional qualifying criteria at § 412.22(e) for these entities. These criteria require that in order to be excluded from the acute care hospital inpatient prospective payment system, a hospital located in or on the campus of an acute care hospital (referred to as a ''hospital-within-a-hospital'') must have a separate governing body, chief executive officer, chief medical officer, and medical staff. In addition, the hospital must perform basic functions independently from the host hospital, incur no more than 15 percent of its total inpatient operating costs for items and services supplied by the hospital in which it is located, and have an inpatient load of which at least 75 percent of patients are admitted from sources other than the host hospital. Originally, these regulations were effective as of October 1994. However, section 4417(a) of the BBA amended section 1886(d)(1)(B) of the Act to provide that a hospital that was excluded from the acute care hospital inpatient prospective payment system on or before September 30, 1995, as an LTCH, must continue to be so classified, notwithstanding that it is located in the same building or in one or more buildings located on the same campus as another hospital (§ 412.22(f)). This provision, codified in § 412.22(f), exempts certain LTCHs that are hospitals-within-hospitals from the ownership and control requirements discussed above.

In the late 1990s, we became aware of a newly developing entity that was physically similar, but legally unrelated, to a hospital-within-a-hospital. These entities were hospital-within-hospital type facilities (in the buildings or on the campuses of acute care hospitals) owned by a separate existing LTCH. We identified these facilities as ''long-term care hospital satellites.''

In the July 30, 1999 **Federal Register** (64 FR 41540), we revised § 412.22(h) to require that in order to be excluded from the acute care hospital inpatient prospective payment system, a satellite of a hospital: (1) Must maintain admission and discharge records that are separately identified from those of the hospital in which it is located; (2) cannot commingle beds with beds of the hospital in which it is located; (3) must be serviced by the same fiscal intermediary as the hospital of which it is a part; (4) must be treated as a separate cost center of the hospital of which it is a part; (5) for cost reporting purposes, must use an accounting system that properly allocates costs and maintains adequate data to support the basis of allocation; and (6) must report costs in the cost report of the hospital of which it is a part, covering the same fiscal period and using the same method of apportionment as that hospital. In

addition, the satellite facility must independently comply with the qualifying criteria for exclusion from the acute care hospital inpatient prospective payment system. The total number of State-licensed and Medicare-certified beds (including those of the satellite facility) for a hospital that was excluded from the acute care hospital inpatient prospective payment system for the most recent cost reporting period beginning before October 1, 1997, may not exceed the hospital's number of beds on the last day of that cost reporting period.

7. Specialty Groups of LTCHs by Patient Mix

There is a widely held view that the population of LTCHs is heterogeneous. We believe that understanding the composition of this population and identifying and classifying subgroups within it are fundamental to designing a prospective payment system for LTCHs.

Broad categories of conditions as defined by major diagnostic categories (MDCs), the principal diagnostic categorization tool used under the acute care hospital inpatient prospective payment system, were used to classify LTCHs according to the medical conditions of their patient caseloads. (MDCs were formed by dividing all possible principal diagnoses into 25 mutually exclusive categories. Most MDCs correspond to a major organ system, though a few correspond to etiology.)

We also explored the possibility of grouping patients by DRGs or by selected individual diagnoses. These attempts resulted in creating groups too small for any effective characterization. However, the analysis did reveal that while some LTCHs treat a wide range of conditions, others specialize in one or two types of conditions. In order to analyze a grouping based on patient mix, under its contract with us, Urban first examined the proportion of facilities' caseloads in specific MDCs. There were five MDCs in which at least one LTCH has a majority (that is, more than 50 percent) of its cases. Patients with respiratory system problems were the most common caseload concentration—in 1997, 13 percent of LTCHs had a caseload concentration of 50 percent to 75 percent, and another 7 percent of LTCHs had more than 75 percent of their cases in this MDC.

The other three MDCs that made up a majority of at least one LTCH's patient caseload (nervous system MDC, musculoskeletal and connective tissue disorders MDC, and factors influencing health status MDC) were all related to rehabilitation needs. (Because rehabilitation-related DRGs were common to LTCHs and fell into the ''Factors Influencing Status'' MDC, we are classifying all cases in this MDC as rehabilitation services for the purpose of this analysis.) Seven percent of LTCHs had a majority of their caseload in an MDC related to rehabilitation-related services. A significantly less common concentration was seen in the 2 percent of LTCHs that had a majority of their patients in the mental diseases and disorders MDC. All but two LTCHs in our analysis had some share of patients with respiratory system problems. Similarly, all but five LTCHs had some patients with circulatory problems.

Based on these findings, we developed a grouping that consists of four broad categories of LTCHs based on patient caseload. Facilities with greater than 50 percent of their cases in the respiratory MDC were assigned to a ''respiratory specialty'' group for the purpose of this analysis. Similarly, all facilities with over 50 percent of their caseload in the mental MDC were designated as ''mental specialty'' facilities. The three rehabilitation-related MDCs were combined into one ''rehabilitation-related MDC'' category and grouped into a ''rehabilitation specialty'' group. All remaining facilities (that did not have high concentrations of patients in the respiratory MDC, the mental MDC, or the rehabilitation-related MDCs category) were placed into a ''multispecialty'' facility group. LTCHs in this category provide care to a wider range of patient types than LTCHs in the first three categories.

To better understand the relatively large number of multispecialty LTCHs, we explored their MDC composition. Not unexpectedly, most of these facilities had high proportions of cases in the respiratory MDC and the rehabilitation-related MDCs category, although some LTCHs did not serve either of these populations in great numbers. Few LTCHs did have a significant share of their caseload in either the respiratory MDC or the rehabilitation-related MDCs category. Only 2 percent of multispecialty LTCHs had less than 25 percent of their caseload in either specialty group. Similarly, only 7 percent of multispecialty facilities had less than 35 percent of their caseload in either of the two groups. In contrast, about 60 percent of LTCHs had at least half of their caseload in either the respiratory MDC or the rehabilitation-related MDCs category. This high share demonstrated that, despite their assignment to the multispecialty category, most LTCHs served a high percentage of patients with respiratory or rehabilitation problems, or both.

Although respiratory and rehabilitation specialty facilities were prevalent in the LTCH population, there were also some ''niche'' LTCHs that have unique patient populations or provide uncommon services. These hospitals included, for example, a large hospital where most admitted individuals (90 percent) die in the facility.

Several LTCHs provided services for special populations. One facility provided services for a prison population. A large share of this facility's funding was through Medicaid; cost report data showed that Medicaid covers two-thirds of its patient stays.

Some other facilities worked with similarly specialized populations and have very small Medicare caseloads. In particular, two facilities that focused on developmentally disabled children and younger adults had fewer than 10 Medicare stays in 1997. Cost reports show that one of these facilities, which provides rehabilitation for its Medicare patients, has few discharges (under 100) regardless of payer source. The other, which provides mostly psychiatric services, relies on public funding for only a small share of its discharge payments.

Although there are a few niche facilities in the LTCH population, our analysis indicated that a preponderance of the LTCHs could be classified in distinct specialty groups that focused on adult rehabilitation and respiratory system care.

8. Sources and Destinations of LTCH Patients

Another useful perspective on LTCHs was the pattern of sources from which patients are admitted to LTCHs and destinations to which LTCH patients are discharged. This information showed how such transition patterns differ among the specialty groups. In general, the findings were consistent with the notion that LTCHs as a group were heterogeneous in terms of the patients they serve.

The vast majority (70 percent) of LTCH patients were admitted from acute care hospitals. Within this group, acute care patients whose stays were designated as ''outlier'' stays, as defined by section 1886(d)(5)(A)(i) of the Act and implemented in § 412.80, were identified separately. Sixteen percent of LTCH admissions were acute care hospital outlier patients, while 54 percent were admitted from acute care hospitals but did not have extraordinarily long acute care stays.

After acute care hospitals, direct admission from the community was the next most common source of admissions (14 percent) to LTCHs.

The admission patterns varied somewhat by LTCH specialty type. Notably, 85 percent of admissions to respiratory specialty LTCHs were from acute care hospitals, including 22 percent that were acute care hospital outlier cases. A very small percentage (7 percent) of admissions to respiratory specialty LTCHs were from the community. In contrast, the admission sources for the rehabilitation specialty LTCHs were more similar to that of the multispecialty LTCHs. Notably, a higher than average share of patients come from SNFs (8 percent) and HHAs (6 percent) and a lower percentage of patients transitioned from acute care hospital outlier stays (12 percent). A relatively large share (11 percent) of patients at rehabilitation specialty LTCHs were admitted directly from the community compared to patients at respiratory specialty LTCHs (7 percent). These findings suggest that patients admitted to rehabilitation specialty LTCHs might present a less medically intensive clinical picture than patients admitted to respiratory specialty LTCHs.

The admission pattern of patients admitted to the mental specialty LTCHs was quite different from those of the other specialties. Thirty one percent of patients are admitted from acute care hospitals, and only 2 percent of patients are admitted after being acute care hospital outlier cases. In contrast, 40 percent of patients were admitted directly from the community and 27 percent were admitted from some other type of Medicare provider.

An analysis of the pattern of discharge destinations for LTCHs shows that, overall, 38 percent of LTCH stays were discharged to the community without additional Medicare services. Almost equal percentages (18 percent) were discharged to SNFs and acute care hospitals, and 21 percent of patients were discharged to HHAs.

Some variations in discharge destination patterns existed among LTCHs by specialty. Relative to the overall sample, the respiratory specialty LTCHs had higher than average percentages of patients discharged to SNFs (24 percent versus 18 percent), and lower percentages discharged to HHAs (14 percent versus 21 percent). However, rehabilitation specialty facilities had a relatively high proportion of cases (34 percent) discharged to HHAs, and a lower than average proportion discharged to the community without additional Medicare services (28 percent versus 38 percent). Finally, mental specialty hospitals have an unusually high percent of cases (71 percent) discharged to the community without additional Medicare services. These findings suggest that patients served by respiratory specialty LTCHs are more likely to require extended care in institutional settings (for example, SNFs), while patients discharged from rehabilitation specialty facilities also require extended care, but not necessarily in institutional settings.

9. LTCHs and Patterns Among Postacute Care Facilities

Urban's research also produced data regarding a comparison of LTCHs with other postacute care settings in order to provide us with the broadest possible understanding of the universe of LTCHs. The findings were only preliminary comparisons of patients among and across postacute settings because of the nature of each category of postacute care providers. Even though data suggest substantial clinical differences among the providers with some areas of overlap, because of some similarities we found it useful to draw parallels and distinctions among postacute care providers. Moreover, findings from this research supported conclusions published in several reports to the Congress produced by ProPAC and MedPAC over the past decade.

Most patients in LTCHs had several diagnosis codes on their Medicare claims, indicating that they had multiple comorbidities and are probably less stable upon admission than patients admitted to other postacute care settings. Relative to IRFs, LTCHs had a higher proportion of patient costs attributable to ancillary services (for example, pharmacy, laboratory, and radiology charges) (MedPAC March 1999 Report to Congress, p. 95). LTCHs also provided care to a disproportionately large number of Medicare beneficiaries who are eligible because of disability. While individuals with disabilities make up about 10 percent of the Medicare population, they make up 17 percent of LTCH patients.

Urban's analysis also explored the demographic characteristics of LTCH patients compared to IRF patients. The proportion of LTCH patients who are under 65 years of age (18 percent) was twice that of IRF patients (9 percent). The share of LTCH patients over 85 years old was slightly higher (18 percent) compared to IRF patients (14 percent). LTCHs also had a higher proportion of male patients and a lower proportion of white patients than IRFs. LTCHs had long median lengths of stay: 21 days versus 16 days for IRFs. About one-third of the LTCH Medicare stays were by beneficiaries who are also eligible for Medicaid, compared to fewer Medicaid-eligible beneficiary stays at IRFs (17 percent). It has been widely documented that dually eligible beneficiaries are generally much sicker than non-Medicaid eligible Medicare beneficiaries.

Urban's analysis also included a description of the demographic characteristics of LTCH patient stays by admission sources—outlier acute care hospital, nonoutlier acute care hospital, and other. Those with prior outlier acute care hospital stays seem to be the most distinctive group in terms of length of stay, gender, race, and poverty: they had the highest mean and median length of stay in the LTCH, the highest male proportion, the highest white proportion, and the lowest proportion of Medicaid-eligible patients. However, in terms of age, those with prior hospital stays (whether outlier or nonoutlier) were quite different from those with other admission sources. Those without a prior acute care hospital stay were younger and about twice as many are under age 65, whose mean age was about 5 and 3 years lower than those with a prior outlier stay and those with a prior nonoutlier stay, respectively. Among those with an acute care hospital stay, the nonoutlier patients were slightly older on average, with higher percentages in the oldest groups (75 to 84 and 85 plus) and the highest median age of all three groups.

The policies in the March 22, 2002 proposed rule and in this final rule were determined in part based on analysis of the above data and information gathered on LTCHs and their Medicare patients.

D. Overview of Systems Analysis for the LTCH Prospective Payment System

For the systems analysis, 3M used the MedPAR (FY 1999 through FY 2000), OSCAR (FY 2000), and HCRIS (FYs 1998 and early 1999) files for the March 22, 2002 proposed rule. Specifically, 3M performed the following tasks:

- Construction of an updated data file, using the most recent data available from CMS.
- Analysis of issues, factors, or variables and presentation of options for possible use in the design and implementation of the prospective payment system.
- Data simulation of various system features to analyze their impact on the design of the prospective payment system.

A data file was constructed to serve as the basis of our patient classification system presented in the proposed rule

and the development of proposed payment weight rates and proposed payment adjustments. The analysis of this data file helped us regarding the structure of the prospective payment system in the proposed rule. We relied upon patient charge data from FY 2000 MedPAR for proposing LTC–DRG weights and upon costs data from FY 1998 and FY 1999 cost reports for proposed payment rates.

For this final rule, we used updated and expanded data from the FY 2000 MedPAR file to develop the payment weight rates and payment adjustments for FY 2003. Section X.K. of this final rule contains a detailed discussion of the data used to develop the FY 2003 payment rates and payment adjustments, the public comments received on the proposed rates and adjustments, and our responses to those comments.

E. Evaluation of DRG-Based Patient Classification Systems

Section 307(b)(1) of Public Law 106–554 modified the requirements of section 123 of Public Law 106–113 by specifically requiring that the Secretary examine ''the feasibility and the impact of basing payment under such a system [the LTCH prospective payment system] on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of long-term care hospital patients as well as the use of the most recently available hospital discharge data.''

In order to comply with statutory mandates, our evaluation of DRG-based patient classification systems focused on two models—the LTC-all patient-refined DRGs (LTC–APR–DRGs, Version 1.0), a severity-based case-mix classification system developed specifically for LTCHs; and the LTC–CMS–DRGs, a modification of the DRG system used in the acute care hospital inpatient prospective payment system.

The LTC–APR–DRGs, a condensed version of 3M's all-patient refined DRGs (APR–DRGs) for acute care hospitals, was developed by 3M Health Information Systems, for exclusive use in LTCHs. The LTC–APR–DRG system was designed to reflect the clinical characteristics of LTCH patients. This case-mix classification model contains 26 base LTC–APR–DRGs, subdivided by 4 severity of illness levels to yield 104 classification levels. In this system, the patient's secondary diagnoses, their interaction, and their clinical impact on the primary diagnosis determine the severity level assigned to each of the 26 LTC–APR–DRGs.

The LTC–CMS–DRGs are based on research done by The Lewin Group (Developing a Long-Term Hospital Prospective Payment System Using Currently Available Administrative Data for the National Association of Long-Term Hospitals (NALTH), July 1999). This model uses our existing hospital inpatient DRGs with weights that accounted for the difference in resource use by patients exhibiting the case complexity and multiple medical problems characteristic of LTCHs. In order to deal with the large number of low volume DRGs (all DRGs with fewer than 25 cases), the LTC–CMS–DRG model groups low volume DRGs into 5 quintiles based on average charge per discharge. The result was 184 classification groups (179 DRG-based and 5 charge-based payment groups) based on patient data from FYs 1994 and 1995. (CMS updated this analysis using patient data from FYs 1999 and 2000 for purposes of system evaluations.)

As discussed in the March 22, 2002 proposed rule (67 FR 13426), under either classification system, DRG weights would be based on data for the population of LTCH discharges, reflecting the fact that LTCH patients represent a different patient mix than patients in short-term acute care hospitals. GROUPER software programs enabled us to examine the most recent LTCH and acute care hospital inpatient prospective payment system patient discharge data in light of the features of each system. Using regression analyses and simulations, the impact of each patient classification system on potential adjustment features for the prospective payment system was assessed. (Data files used in these analyses are specified in section V.B. of this preamble.) Our medical staff as well as physicians involved in treatment of patients at LTCHs provided additional input from the standpoint of clinical coherence and practical applicability.

The system that we are adopting in this final rule for the LTCH prospective payment system is the LTC–CMS–DRG GROUPER based on the Lewin model that we proposed in the March 22, 2002 proposed rule (67 FR 13426). We believe this system accurately predicts costs without the problems that we believe could be inherent with the APR–DRG system. (In section IX. of this final rule, which describes the functioning of the classification system as a component of the LTCH prospective payment system, the LTC–CMS–DRGs are referred to as the LTC–DRGs.)

It is important to note that we have analyzed both systems based on MedPAR files generated by LTCH patient data, using the best available data. Since the TEFRA payment system, under which LTCHs are currently paid, is not tied to patient diagnoses, the coding data from LTCHs have not been used for payment. Nevertheless, data analyses indicated that there was a minimal difference in both systems' abilities to predict costs. (The difference in the R^2, a statistical measure of how much variation in resource use among cases is explained by the models, was only 0.0313.)

In the March 22, 2002 proposed rule (67 FR 13426), we indicated that we believed that either classification system would result in more equitable payments for LTCHs compared to current payment methods. The LTCH prospective payment system would generally improve the accuracy of payments for more clinically complex patients. (See our discussion of the TEFRA payment system in section III.C. of this final rule.) As the Congress intended, the DRG weights under the LTCH prospective payment system would reflect the ''* * * different resource use of long-term care hospital patients.'' Patients requiring more intensive complex services would be classified in LTC–DRGs with higher relative weights and hospitals would receive appropriately higher payments for these patients. In the proposed rule, we solicited comments on the impact that one system may have over another as it applies to different kinds of LTCHs. Any public comments that we received on the impact of both systems are included in sections IX. and XII. of this final rule.

Although either system would result in more equitable payments to LTCHs, we have several interrelated concerns about adopting the LTC–APR–DRG system based upon its complexity, its clinical subjectivity, and its utility as it relates to other Medicare prospective payment systems. The LTC–APR–DRG model provides a clinical description of the population of LTCHs, patients exhibiting a range of severity of illness with multiple comorbidities as indicated by secondary diagnoses. The clinical interaction of the primary diagnosis with these comorbidities determines the severity level of the primary diagnoses, resulting in the final assignment to a LTC–APR–DRG by the GROUPER software designed for this system.

One aspect of our examination of the LTC–APR–DRG system included clinical review of actual case studies provided by physicians at several LTCHs and evaluations of the LTC–APR–DRG assignments that would have resulted based on the clinical logic of

the APR–DRG GROUPER. A review of a number of those cases by different medical professionals resulted in different possible classifications for the GROUPER program. Looking at the same case, different views were held as to which APR–DRG category or to which level of severity the case should be grouped. Given the array of specialization at different LTCHs reflecting a range of services and patient types, as described in section V.C.7. of this preamble, we believe that we lack sufficient data, at this point in time, to definitely determine the effect of particular comorbidities on patient resource needs in LTCHs. Furthermore, it appears that depending on how many of the diagnoses are coded, medical judgement suggests that it could be possible to classify the same patient in more than one group or level of severity. Because of these concerns, we believe that payments under such a policy could be insufficiently well-defined, given currently available data, to ensure consistently appropriate Medicare payments.

We note that the prospective payment system that we have adopted for IRFs is based on a patient classification system that includes a measure of comorbidities, the combination of the case-mix group (CMG) and comorbidity tier. In general, most IRF patients are treated for one primary rehabilitation condition (for example, a hip replacement) that is associated with functional measures and sometimes age. The CMGs constructed for IRF patients account for diagnostic, functional, and age variables. These variables are used to explain the variability in the cost among the various CMGs. Some of the remaining variability in cost could then be further explained by selected comorbidities which the inpatient rehabilitation data showed were statistically significant.

In contrast, determining whether particular comorbidities increase the cost of a case for a LTCH patient is complicated by the nature of the clinical characteristics of these patients. More specifically, many LTCH patients have numerous conditions that may not all be relevant to the cost of care for a particular discharge. Although the patient actually has a specific condition, including this condition among secondary diagnoses coded under the LTC–APR–DRG system may assign an inaccurate severity level to the primary diagnosis and result in inappropriate LTC–APR–DRG payment. We also believe that reliance on existing comorbidity information submitted on LTCH bills could result in significant variation in the assignment of the specific LTC–APR–DRGs.

The LTC–CMS–DRG system is a system that is familiar to hospitals because it is based on the current DRG system under the acute care hospital inpatient prospective payment system. We believe that the familiarity of the LTC–CMS–DRG model may best facilitate the transition from the reasonable cost-based system to the prospective payment system as well as providing continuity in payment methodology across related sites of care (for example, an acute care hospitalization for a patient with a chronic condition).

We further note that the adoption of severity-adjusted DRGs will be explored by CMS for use under the acute care hospital inpatient prospective payment system. In its June 2000 Report to Congress, MedPAC recommended that the Secretary ''* * * improve the hospital inpatient prospective payment system by adopting, as soon as practicable, diagnosis related group refinements that more fully capture differences in severity of illness among patients.'' (Recommendation 3A, p. 63)

In the March 22, 2002 proposed rule, although we did not propose adopting the LTC–APR–DRGs in the LTCH prospective payment system, we did solicit comments on its possible use.

Even though we are using LTC–DRGs in the LTCH prospective payment system in this final rule, we may have the opportunity to propose a severity-adjusted patient classification for LTCHs in the future, particularly if the acute care hospital inpatient prospective payment system moves in this direction. Any public comments that we received on the possible use of LTC–APR–DRG or some other system in the future are addressed in section IX. of this final rule.

VI. Recommendations by MedPAC for a LTCH Prospective Payment System

As we noted in the section III.E. of this final rule, since the establishment of the acute care hospital inpatient prospective payment system in 1983, the topic of postacute care payments under Medicare has been addressed in reports to the Congress prepared by ProPAC and its successor, MedPAC. Recommendations in these reports encouraged modifications to Medicare payment policies, examined the differences among postacute care providers and within each category of providers, and reiterated the goal of eventually implementing prospective payment systems for providers being paid under the target amount payment methodology.

In its March 1, 1996 Report and Recommendations to the Congress, ProPAC recommended that ''prospective payment systems should be implemented for all postacute services. The payment method for each service should be consistent across delivery sites. The Secretary should explore methods to control the volume of postacute service use, such as bundling services for a single payment.'' (Recommendation 20, p. 75)

The following year, in its March 1, 1997 Report and Recommendations to the Congress, ProPAC recommended ''* * * the Congress and the Secretary to consider the overlap in services and beneficiaries across postacute care providers as they modify Medicare payment policies. Changes to one provider's payment method could shift utilization to other sites and thus fail to curb overall spending. To this end, ProPAC commends HCFA's [now CMS'] efforts to identify elements common to the various facility-specific patient classification systems to use in comparing beneficiaries across settings.'' Ultimately, Medicare should move towards more uniform payment policies across sites, the Report continued, and ''payment amounts should vary depending on the intensity and nature of the services beneficiaries require, rather than on the setting. Further, providers should have incentives to coordinate services or an episode* * *.'' (p. 60)

However, with enactment of the BBA, the Congress enacted legislation to provide for distinct prospective payment systems for HHAs (section 4603(b)), SNFs (section 4432(a)), and IRFs (section 4421). The BBA further required the development of a legislative proposal for the case-mix adjusted LTCH prospective payment system. Section 123 of the BBRA requires the Secretary to develop a per discharge DRG-based system for LTCHs, and section 307(b)(1) of the BIPA mandates that the Secretary examine the feasibility and impact of basing payments to LTCHs using the existing or refined DRGs, modified to account for the resource use of LTCH patients. Thus, the Congress mandated distinct systems that would result in different payments, depending on the type of Medicare provider, and not a system that is uniform across sites of care.

Notwithstanding the mandate to establish postacute care prospective payment systems, MedPAC continued to articulate concern regarding the overlap of services among postacute providers. In its June 1998 Report to Congress, MedPAC stated that ''all of these policy changes, in combination with the fact

that similar services can be provided in multiple postacute settings, indicate the need for continued monitoring and analysis of postacute providers, policies, and service utilization.'' (p. 90)

In its March 1999 Report to Congress, MedPAC encouraged the Secretary to ''* * * collect a core set of patient assessment information across all postacute care settings.'' (Recommendation 5A, p. 82)

Section 123 of the BBRA specifically mandated a per discharge, DRG-based prospective payment system for LTCHs and established a timetable for the presentation of the proposed system in a report to the Congress by October 1, 2001 and for implementation of the actual prospective payment system by October 1, 2002. Further direction for a distinct prospective payment system for LTCHs was indicated in section 307(b) of the BIPA, which directed the Secretary to examine a number of payment adjustment factors and established a default system if the Secretary is unable to meet the implementation timetable.

As we developed the prospective payment system for LTCHs described in this final rule, however, we wish to state that we do not believe that the establishment of distinct prospective payment systems for each postacute care provider group eliminates the need to monitor payments and services across all service settings. We endorse MedPAC's Recommendation 3G, in its March 2000 Report to Congress, that encourages the Secretary to ''assess important aspects of the care uniquely provided in a particular setting, compare certain processes and outcomes of care provided in alternative settings, and evaluate the quality of care furnished in multiple-provider episodes of postacute care.'' (p. 65) We intend to monitor the appropriateness of LTCH stays by tracking the number of LTCH patients and SNF patients and the frequency of subsequent admissions to an acute care hospital. We believe these data will be valuable in assessing the outcome of care provided in these settings.

Furthermore, we strongly support the additional research that will be required to choose or to develop an assessment instrument that will evaluate the quality of services delivered to beneficiaries in postacute settings.

VII. Evaluated Options for the Prospective Payment System for LTCHs

Section 123 of the BBRA and section 307(b) of the BIPA establish the statutory authority for the development of the prospective payment system for LTCHs that is discussed in this final rule. Under the BBRA, we are required to:

- Develop a per discharge prospective payment system for inpatient hospital services furnished by LTCHs described in section 1886(d)(1)(B)(iv) of the Act.
- Include an adequate patient classification system that is based on DRGs that reflect the differences in patient resource use and costs.
- Maintain budget neutrality.
- Submit a report to the Congress describing this system by October 1, 2001.
- Implement this system for cost reporting periods beginning on or after October 1, 2002.

Section 307(b) of the BIPA modified the requirements of section 123 of the BBRA by requiring the Secretary to—

- Examine the feasibility and the impact of basing payment under the prospective payment system on the use of existing (or refined) DRGs that have been modified to account for different resource use of LTCH patients, as well as the use of the most recently available hospital data.
- Examine appropriate adjustments to LTCH prospective payments, including adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment.

Although the statutory mandate for development of the LTCH prospective payment system established in the BBRA and the BIPA requires a per discharge, DRG-based system, generally the statute gives the Secretary broad discretion in designing the prospective payment system. The design of any prospective payment system requires decisions on the following issues:

- The categories used to classify services such as DRGs.
- The methodology for calculating the relative weights that are assigned to each patient category to reflect the relative difference in resource use across DRGs (these are relative values in economic terminology).
- The methodology for calculating the base rate, which is the basis for determining the DRG-based Federal payment rates. It is a standardized payment amount that is based on average costs from a base period and also reflects the combined aggregate effects of the payment weights and various facility-level and case-level adjustments. Operating and capital-related costs may be combined in this base rate or may be treated separately.
- Adjustments to the base rate to reflect cost differences across providers, such as disproportionate share adjustments, indirect graduate medical education programs, and outliers.
- Finally, a procedure for the transition from the current system to the DRG-based prospective payment system must be established.

We pursued a two-pronged strategy as we developed the prospective payment system for LTCHs. First, we analyzed the data and empirical facts about LTCH patients and providers summarized in section V.C. of this preamble. Secondly, in light of this information, we analyzed each option based on regressions and simulations, using the data sets described in section V.B. of this preamble.

Both technical and policy considerations were important in these design proposals. We reviewed features of other recent prospective payment systems designed or implemented by CMS for other postacute care providers to determine the feasibility of including features in the LTCH prospective payment system and to identify modifications that might enhance their application for this system. In addition, we considered factors that were important to the development of Medicare's acute care hospital inpatient prospective payment system, such as urban and rural location and whether the hospital served a disproportionate share of low-income patients. We also analyzed clinical significance, administrative simplicity, availability of data, and consistency with other Medicare payment policies.

In addition to satisfying statutory requirements, the design of the prospective payment system for LTCHs presented in this final rule is the result of the following factors:

- Our empirical understanding of the ''universe'' of LTCHs and long-term care patients, as set forth in section V.C. of this preamble.
- Our experience with the acute care hospital inpatient prospective payment system.
- Consideration of recommendations in MedPAC's reports to Congress on postacute care.
- Our monitoring of the establishment and continuing development and refinement of prospective payment systems for IRFs, SNFs, and HHAs.

In addition, as we deliberated on the choice of the specific model of DRG-based system that was to be used for the LTCH prospective payment system, we gathered information from LTCH physicians and LTCH representatives.

VIII. Elements of the LTCH Prospective Payment System

A. Overview of the System

We are implementing a prospective payment system for LTCHs that will use

information from LTCH patient records to classify patients into distinct LTC–DRGs based on clinical characteristics and expected resource needs. This patient classification system is discussed in detail in section IX. of this final rule. The separate payments that will be calculated for each LTC–DRG and any adjustments to these payments are discussed in detail in section X.J. of this final rule. Below we discuss the applicability of the requirements of the system and other implementation provisions.

B. Applicability

1. Criteria for Classification

Our existing regulations at 42 CFR Part 482, Subparts A through D, set forth the general conditions that hospitals must meet to qualify to participate in Medicare. There are no additional conditions for LTCHs as there are for psychiatric facilities.

Criteria for classification of a hospital as a LTCH for purposes of payment are set forth in existing § 412.23(e). Section 412.23(e) provides that a LTCH must—

- Have a provider agreement to participate as a hospital and an average inpatient length of stay greater than 25 days; or for cost reporting periods beginning on or after August 5, 1997, for a hospital that was first excluded from the acute care hospital inpatient prospective payment system in 1986, have an average inpatient length of stay of greater than 20 days and demonstrate that at least 80 percent of its annual Medicare inpatient discharges in the 12-month cost reporting period ending in FY 1997 have a principal diagnosis that reflects a finding of neoplastic disease, as defined in regulations. The calculation of the average inpatient length of stay is calculated by dividing the number of total inpatient days (less leave or pass days) by the number of total discharges for the hospital's most recent complete cost reporting period.
- Meet the additional criteria specified in § 412.22(e) if it is to be classified as a hospital-within-a-hospital and to be excluded from the acute care hospital inpatient prospective payment system.
- Meet the additional criteria specified in § 412.22(h) if it is to be classified as a satellite facility and to be excluded from the acute care hospital inpatient prospective payment system.

In the March 22, 2002 proposed rule, we proposed that we would apply the existing criteria described above for classification as a LTCH under the LTCH prospective payment system with one exception relating to the average length of stay requirement discussed in section VIII.B.2. below.

Comment: One commenter described a specific LTCH that specializes in end-of-life palliative care for advanced stage cancer patients. Because of the costs associated with this LTCH's case-mix, the commenter was concerned that the LTCH would be unable to continue to offer this type of care based on the payments it expected to receive under the LTCH prospective payment system. Therefore, the commenter requested that CMS allow the hospital to qualify as either a critical access hospital (CAH) or a cancer hospital and continue to be exempted from the acute care hospital inpatient prospective payment system and be paid on a reasonable cost basis.

Response: In order for a hospital to be classified as a CAH and not as a LTCH, the hospital would have to meet the statutory criteria for classification as a CAH in section 1820(c)(1)(B) of the Act. Similarly, a hospital would have to meet the statutory criteria for classification as a cancer hospital in section 1886(d)(1)(B)(v) of the Act to be classified as such. To the extent that a hospital does not satisfy the statutory criteria to be classified as a CAH or a cancer hospital and continues to satisfy the statutory criteria to be classified as a LTCH, the hospital will continue to be classified as a LTCH as required by the statute. Any changes in either of these criteria and the accompanying requirements would require legislative action.

Comment: Several commenters referenced existing provisions at § 412.22(f) that ''grandfather'' certain LTCHs for participation in the Medicare program and questioned how this status would be affected by the implementation of the LTCH prospective payment system.

Response: We interpret section 4417 of the BBA, codified as section 1886(d)(1)(B) of the Act and implemented under in § 412.22(f), to permit existing LTCHs that were designated LTCHs on or before September 30, 1995, and were co-located with acute care hospitals as hospitals-within-hospitals, to be exempt from compliance with § 412.22(e) concerning the ownership and control requirements for hospital-within-hospital status without losing their status as hospitals excluded from the acute care hospital inpatient prospective payment system. The ''grandfathered'' status conferred by the statute, which allowed these particular LTCHs to retain the preexisting relationships with their host hospitals, will be unaffected by the implementation of the prospective payment system for LTCHs. However, we emphasize that, for these ''grandfathered'' LTCHs to receive payment under the LTCH prospective payment system, they must still satisfy the new requirements established under the LTCH prospective payment system for the average length of stay for Medicare patients of greater than 25 days under revised § 412.23(e)(2) discussed below. Moreover, since we believe that the intent of the statute was to only exempt those pre-FY 1996 LTCHs that are hospitals-within-hospitals from the requirements of § 412.23(e), these ''grandfathered'' LTCHs will be subject to the onsite discharge and readmission policies set forth in § 412.532, in the same way that they were under the 5-percent threshold established by the TEFRA system (64 FR 41537, July 30, 1999).

Comment: Two commenters responded to the description of the universe of LTCHs in the proposed rule by suggesting that CMS require LTCHs that treat large percentages of rehabilitation patients to seek certification as IRFs. Another commenter urged CMS to require LTCHs to monitor their admission criteria to require evaluation of rehabilitation needs and that patients who predominantly need rehabilitation, without complex acute medical needs, should be excluded from admission to a LTCH. The commenter also suggested that CMS enforce an equivalence of payment between LTCHs and IRFs for patients with acute rehabilitation needs. An additional commenter suggested that LTCHs specializing in treating patients with psychiatric LTC–DRGs be required to seek certification as psychiatric facilities.

Response: Under section 1886(d)(1)(B) of the Act, the prospective payment system for acute care hospital inpatient operating costs set forth in section 1886(d) of the Act does not apply to several specified types of hospitals, including LTCHs which are defined in section 1886(d)(1)(B)(iv)(I) of the Act as ''* * * a hospital which has an average inpatient length of stay (as determined by the Secretary) of greater than 25 days.'' Section 1886(d)(1)(B)(iv)(II) of the Act also provides another definition of LTCHs: specifically, a hospital that first received payment under this subsection in 1986 which has an average inpatient length of stay (as determined by the Secretary) of greater than 20 days and has 80 percent or more of its annual Medicare inpatient discharges with a principal diagnosis of neoplastic disease in the 12-month cost reporting period ending in FY 1997. Accordingly, the statute does not provide any exclusions from payment as

a LTCH based on any other criteria, such as treating rehabilitation patients or psychiatric patients. As required by the BBRA and the BIPA, we designed a prospective payment system for LTCHs, effective October 1, 2002, as a distinct classification of hospitals excluded from the acute care hospital inpatient prospective payment system. Congressional action would be required for any additional requirements or restrictions for classification as LTCHs. After a hospital qualifies as a LTCH and meets the conditions of participation set forth in existing regulations at 42 CFR 482, Subparts A through D, the hospital is free to determine the type of services it will provide. If a LTCH chooses to be treated as a particular type of hospital for Medicare payment purposes, it would have to meet the statutory criteria for that particular type of hospital.

Comment: Two commenters questioned specific aspects of the Medicare requirements for hospitals to be paid under the LTCH prospective payment system. One of the commenters suggested using the collection of information requirements established under the Paperwork Reduction Act of 1995 as a rationale for urging CMS to gather more information on LTCH patients so that CMS could develop a mandatory functional status measure for LTCH patients falling into three LTC–DRGs that the commenter identified as reflecting rehabilitation needs. The other commenter urged CMS to require the development and use of a patient assessment tool for LTCH patients classified in rehabilitation LTC–DRGs similar to the IRF patient assessment instrument (PAI).

Response: Section 123 of the BBRA and section 307 of the BIPA confers broad authority on the Secretary to design and implement a prospective payment system for LTCHs. In particular, although section 123(a)(2) of the BBRA provides that the Secretary may require LTCHs to submit such information as the Secretary requires to develop a LTCH prospective payment system, the statute contains no requirement for LTCHs to collect information on measuring an individual patient's functional status. Section 123 of the BBRA provided the Secretary with the authority to collect such information from LTCHs that may be necessary to develop the LTCH prospective payment system. The system we have developed incorporates all of the DRGs used in the acute care hospital inpatient prospective payment system. While many patients admitted to LTCHs are rehabilitation patients, most of the patients treated by LTCHs are not rehabilitation patients. Accordingly, since the IRF prospective payment system, which was developed for rehabilitation patients, incorporates functional status as an integral part of the classification system, it was necessary to collect patient functional status information. However, since, for LTCHs, we have adopted the same DRGs used for inpatient acute care hospitals, functional status is not a part of that system and, therefore, that information is not necessary to collect.

2. Change in the Average 25-Day Total Inpatient Stay Requirement

Section 1886(d)(1)(B)(iv)(I) of the Act describes a LTCH generally as ''a hospital which has an average inpatient length of stay (as determined by the Secretary) of greater than 25 days.'' Thus, the statute gives the Secretary broad discretion in determining the average inpatient length of stay for hospitals for purposes of determining whether a hospital warrants exclusion from the acute care hospital inpatient prospective payment system under section 1886(d) of the Act. Existing Medicare regulations at §§ 412.23(e)(1) and (e)(2) include all hospital inpatients in this calculation of the average inpatient length of stay.

As we indicated in the March 22, 2002 proposed rule (67 FR 13430), our data revealed that approximately 52 percent of Medicare patients at LTCHs have lengths of stay of less than two-thirds of the average length of stay for the LTC–DRGs, and 20 percent have a length of stay of even less than 8 days. This means that some hospitals, while currently qualifying as LTCH by averaging non-Medicare long-stay patients to maintain a length of stay of over 25 days, do not generally furnish ''long-term care'' to their Medicare patients. In these situations, many of the hospitals' short-stay Medicare patients could be receiving appropriate services as patients at acute care hospitals. Under the LTCH prospective payment system, the LTC–DRG weights and standard Federal payment rate are based on the charges and costs of services furnished to LTCH patients, which are typically more medically complex and more costly than those furnished to acute care hospital patients.

The LTCH prospective payment system will result in higher per discharge payments for LTCHs than payments under the acute care hospital inpatient prospective payment system for patients that will group into identical DRGs under each system. Therefore, we stated that we believed that application of current policy, which factors in non-Medicare patients' lengths of stay in determining LTCH status, could result in inappropriately higher payments for those Medicare short-stay patients who happen to be treated in a LTCH instead of an acute care hospital. This is the case when a hospital does not reach the mandatory 25-day average length of stay for designation as a LTCH without non-Medicare patients included in the calculation. Therefore, we proposed that if a hospital were not treating Medicare patients that, on average, require the more costly services offered at LTCHs that differentiate these hospitals from acute care hospitals, Medicare payments would be determined under the acute care hospital inpatient prospective payment system. Such payments would be lower for each acute care DRG than for each LTC–DRG, reflecting the lower costs of acute care hospitals.

Under the current reasonable cost-based reimbursement system, Medicare payments to LTCHs are commensurate with the actual reasonable costs incurred by the hospital. Therefore, under that system, Medicare payments for shorter lengths of stay patients reflect the lower costs of those patients. However, under the LTCH prospective payment system, which is based on average costs of treatment for particular diagnosis, the hospital will receive prospective payments based on the average costs for these much shorter length of stay patients. Even under our short-stay outlier policy, as described in section X.C. of this final rule, the hospital will have the opportunity to be paid 120 percent of its costs.

Therefore, in the March 22, 2002 proposed rule, we proposed to include the hospital's Medicare patients, but not non-Medicare patients, in determining the average inpatient length of stay (§ 412.23(e)(2)) for purposes of section 1886(d)(1)(B)(iv)(I) of the Act.

Our proposal was based on a belief that there would be a strong incentive for LTCHs not to admit many short-stay Medicare patients since doing so could jeopardize their status as a LTCH. Instead, those patients could receive appropriate care at an acute care hospital and the care will be paid under the acute care hospital inpatient prospective payment system. Furthermore, our proposal to change the methodology for determining the average inpatient length of stay to be based only on Medicare patients was consistent with the intent of our proposed policies to make different payments for cases of very short-short stay discharge and short-stay outliers. These proposed policies also were intended to discourage LTCHs under the prospective payment system from treating Medicare patients who do not

require the more costly resources of LTCHs and who could reasonably be treated in acute care hospitals.

We received a substantial number of comments on the proposed change to the average 25-day length of stay requirement.

Comment: The majority of the commenters endorsed the proposed policy of counting only Medicare patients in determining the 25-day average length of stay. However, the commenters believed that the calculation should be based on total days that a Medicare patient received care in the LTCH rather than just the days for which the cost of care was covered by Medicare (that is, ''covered days'').

Since a high percentage of LTCH patients are admitted following inpatient stays at acute care hospitals, the commenters expressed concern that some patients could exhaust their Medicare coverage before it was clinically appropriate for them to be discharged from the LTCH. The commenters were concerned that if only Medicare-covered days were counted in the average length of stay calculation for qualification as a LTCH, it would behoove a hospital to treat only those Medicare patients who were far from exhausting their Part A benefits and, concomitantly, to refuse admittance to patients with limited or no remaining Medicare days, regardless of the clinical appropriateness of such an admission in order to retain (or attain) LTCH status. The commenters gave the following as an example: If only covered days were counted in the qualification formula, a Medicare patient who was actually in the LTCH for 30 days but only had 4 days of Medicare Part A coverage remaining upon admittance to the LTCH, for purposes of the formula, would count as a patient stay of 4 days. Thus, the commenters pointed out, while the hospital would be treating Medicare patients who have an average length of stay of over 25 days, a number of these admissions could jeopardize the hospital's payment under Medicare as a LTCH.

Two commenters also noted that, under existing policy which counted all patient days, Medicare noncovered days were not excluded from the 25-day average length of stay calculations. They urged us to continue this policy while restricting the actual patient count to Medicare patients.

Response: As noted above, our data analyses disclosed that a significant number of Medicare patients at LTCHs were treated for considerably less time than the average length of stay. In many cases, in order to maintain the current 25-day length of stay requirement, these shorter Medicare stays were being offset by much longer stays of non-Medicare patients. Given the Secretary's broad discretion under section 1886(d)(1)(B)(iv)(I) of the Act to define the 25-day average length of stay, we proposed to revise § 412.23(e)(1) to limit the average inpatient length of stay calculation solely to Medicare patients. Our purpose was to ensure that payments under the LTCH prospective payment system are based on the charges and costs of treating Medicare patients with the high medical complexity associated with LTCHs, and not the costs of providing highly complex care to non-Medicare patients.

We do not wish to create any barriers for LTCHs to treat Medicare patients who require long-term hospitalization and who could benefit from the particular treatment modalities available in some LTCHs. LTCHs exist as a provider-type in order to treat Medicare patients requiring complex long-term, hospital-level care. We believe that a hospital's right to qualify for payments under the prospective payment system for LTCHs should result from the actual provision of clinically appropriate care to Medicare LTCH patients rather than on the number of Medicare covered days remaining for any of their patients during any particular cost reporting period. Accordingly, in this final rule, we are maintaining our current policy of counting all patient stays and revising §§ 412.23(e)(2) and (e)(3) to specify that we will count *all* the days in a Medicare patient's stay (covered and noncovered days), that is, total days, in the LTCH in calculating whether a LTCH meets the average 25-day length of stay requirement.

Comment: Two commenters disagreed with the proposed policy change and requested CMS to retain the policy of counting all patient days in the calculation. One of the commenters noted that, based on its experience, its non-Medicare patients required more complicated treatment than its Medicare patients and, therefore, for a hospital's status to hinge on the shorter length of stay of Medicare patients contradicted the purpose of a LTCH.

Response: We reiterate that section 1886(d)(1)(B)(iv)(I) of the Act confers broad authority on the Secretary to determine the parameters of the ''average inpatient length of stay of greater than 25 days.'' We interpret the provisions to apply to payment for patients who are provided care under Medicare. We believe that the redefinition of the average length-of-stay criterion as limited solely to Medicare patients at LTCHs conforms to the requirements of section 123 of the BBRA for the development of a prospective payment system for payment of inpatient hospital services furnished by LTCHs ''under the [M]edicare program.'' Furthermore, nothing in this revised criterion prevents or discourages LTCHs from accepting non-Medicare patients. Should a LTCH be unable to retain its status within this payment category because a significant number of its Medicare patients do not require long-term hospital-level care, we believe that it is reasonable for the facility to reevaluate the appropriateness of its admission policies. Notwithstanding any changes in the type of patients treated at the hospital, the hospital will still be able to admit and be paid by Medicare as an acute care hospital.

Comment: Several commenters expressed concern about the length of time an existing LTCH would have to comply with the proposed revised average 25-day length of stay requirement before its ability to participate in Medicare as an LTCH would be jeopardized and questioned compliance monitoring. The commenters suggested that CMS institute a ''grace period'' for LTCHs to comply with the new requirement.

Response: The revised definition for an average length of stay, which is determined on Medicare inpatients only, is effective for LTCH hospitals starting with their first cost reporting period that begins on or after October 1, 2002. We have directed our fiscal intermediaries to determine whether existing LTCHs qualify for payments under the LTCH prospective payment system according to the revised criteria after October 1, 2002. In addition, we have directed our fiscal intermediaries to notify LTCHs about whether a LTCH qualifies for payment under the LTCH prospective payment system before the start of the LTCH's next cost reporting period.

Under existing policy at § 412.22(d), changes in a hospital's status are effective at the beginning of the next cost reporting period and are effective for the entire cost reporting period. Therefore, for example, in the case of an existing LTCH with a cost reporting period beginning on October 1, 2002, for which a LTCH's fiscal intermediary determined on January 15, 2003, that the LTCH did not meet the new 25-day average length of stay criterion for the 12-month period for which the fiscal intermediary or CMS has the most recent cost report data, the LTCH would be paid as a LTCH until September 30, 2003. The LTCH would then lose its LTCH status as of October 1, 2003 unless for the 6 months prior to

September 30, 2003, the LTCH demonstrated that it had an average length of stay of greater than 25 days for its Medicare inpatients under existing § 412.23(e)(3)(ii), which we are not revising. If the hospital was able to demonstrate that during the 6 months prior to September 30, 2003, that it had an average Medicare length of stay of greater than 25 days, the hospital would continue to be paid as a LTCH even after October 1, 2003 (§ 412.23(e)(3)(ii)). Therefore, notification by the LTCH's fiscal intermediary following the effective date of the LTCH prospective payment system on October 1, 2002, will permit LTCHs that would not qualify based on their most recent cost report data to adapt to the revised length of stay criterion before reaching the actual point where they would cease to be paid as LTCHs.

As a further example, a LTCH that begins its next cost reporting period on January 1, 2003 will be notified about whether it satisfies the revised average length of stay criterion effective on October 1, 2002, for the 12-month period for which the fiscal intermediary or CMS has the most recent cost report data, by its fiscal intermediary after the start of its fiscal year on January 1, 2003. In the event that a LTCH's most recent cost report indicates that it would not qualify, the LTCH would still be paid as a LTCH from January 1, 2003 through December 31, 2003. The hospital would lose its LTCH status as of January 1, 2004, and be paid under the acute care hospital inpatient prospective payment system unless it provides data to its fiscal intermediary for the 6-month period immediately preceding December 31, 2003, which demonstrate that it satisfies the average length of stay criterion (§ 412.23(e)(3)(ii)).

Through application of the existing regulations described above, we believe that LTCHs are granted sufficient time to adapt to the new length of stay requirements for payment under the LTCH prospective payment system and we do not believe that it is necessary or appropriate to grant an additional ''grace period'' for this purpose.

Comment: One commenter noted that juxtaposing the proposed interrupted stay policy with the revised average 25-day length of stay criterion could be problematic in determining whether a hospital continued to qualify for Medicare payments as a LTCH. The commenter described the following scenario: a patient, after a 100-day stay at a LTCH, is discharged to an acute care hospital 5 days before the end of a Medicare fiscal year that resulted in an average length of stay of 25.01 days. The patient is then readmitted at the start of the next Medicare fiscal year to the LTCH as an interrupted stay from the acute care hospital. Under our proposed interrupted stay policy, we would treat both stays as one discharge from the LTCH. Therefore, the patient's 100-day stay from the prior Medicare cost reporting period would be counted in the following year's cost reporting period and the LTCH's average Medicare inpatient length of stay for the prior cost reporting period would drop below 25 days. The commenter questioned whether, for purposes of calculating the average 25-day length of stay, the LTCH be at risk of losing LTCH status if the average length of stay for the previous Medicare fiscal year fell below the 25 days.

Response: Under our proposed interrupted stay policy, a LTCH patient who is discharged to an acute care inpatient hospital, an IRF, or a SNF and then returns to the same LTCH would be treated as an interrupted stay (with one LTC–DRG payment) or as a new admission (with two separate LTC–DRG payments) depending on the patient's length of stay compared to the average length of stay and the standard deviation for the acute care hospital inpatient prospective payment system DRG, the IRF combination of the CMG and the comorbidity tier, or 45 days for all Medicare SNF cases.

We have revised the proposed interrupted stay policy in this final rule. The interrupted stay policy set forth in section X.E. of this final rule provides that the lengths of stay at acute care hospitals and IRFs are based on one standard deviation from the average length of stay for all patients in acute hospitals and IRFs, respectively. Therefore, in this final rule, the interrupted stay policy for acute care hospitals, IRFs, and SNFs are based on the same formula. Under this revised policy, the patient stay described by the commenter would be an interrupted stay if the patient returned to the LTCH from the acute care hospital before reaching the 9-day threshold for acute care hospitals. The readmission to the LTCH would be considered as a resumption of the treatment from the original admission rather than as a second admission. Therefore, the patient's original discharge from the LTCH at the end of the fiscal year would not count as a discharge for length of stay calculations for that fiscal year because the discharge to the acute care hospital is merely the point at which the stay was interrupted, and the patient ultimately returned to the same LTCH within a specified fixed day period. For both Medicare payment determinations under the interrupted stay policy and length of stay calculations, the discharge for that patient would occur when the patient is discharged from the LTCH during the next fiscal year. This is the case since the calculation of a LTCH's average length of stay for purposes of qualifying as a LTCH is based on discharges during a cost reporting period. Consequently, in accordance with the requirements at § 412.23(e), while the days of care provided to this patient would be included in the length of stay calculation in the first year, the discharge for that patient with the 100-day stay would be counted in the length of stay calculation for the subsequent fiscal year.

We understand the commenter's concern that such a scenario could jeopardize the hospital's ability to participate in the Medicare program as a LTCH. We emphasize that, under the policy described in the previous response, this is not the case.

The procedure by which a LTCH will be evaluated by its fiscal intermediary to determine whether it will qualify as a LTCH under the revised 25-day average length of stay criterion is the same procedure presently employed under the TEFRA system. Following the review of the LTCH's most recent cost report by the fiscal intermediary, which for FY 2003 will occur following the effective date of the LTCH prospective payment system, the LTCH will be notified whether, based on that cost report, it satisfies the greater than 25-day average length of stay requirement for its Medicare patients for payment as a LTCH under the LTCH prospective payment system. As noted above, the LTCH will become subject to this revised criterion for its first cost reporting period beginning on or after October 1, 2002.

A LTCH with a cost reporting year of October 1, 2002 through September 30, 2003 that does not qualify as a LTCH under the new criterion based on its FY 2001 cost report will continue to be paid as a LTCH until October 1, 2003. The hospital will then be paid as an acute care hospital unless it demonstrates that, during the 6 months prior to October 1, 2003, it had an average Medicare inpatient length of stay of greater than 25 days (§ 412.23(e)(3)(ii)). Therefore, under the scenario presented by the commenter in which the LTCH that failed the 25-day average length of stay requirement for its Medicare patients during one fiscal year because the pivotal discharge for that year was forced into the next year by the interrupted stay policy, the LTCH would not lose its designation if it could present 6 months of data indicating compliance with the new requirement

for the period preceding the cost reporting period for which it would lose its designation.

Comment: Three commenters recommended that CMS change the day requirement in the average length of stay criterion. One commenter recommended lowering the 25 days to 20 days. Another commenter recommended requiring that only 95 percent of all LTCHs meet the 25-day requirement. The third commenter recommended changing the length of stay criterion so that it is computed based on the median length of stay rather than the average length of stay.

Response: Section 1886(d)(1)(B)(iv)(I) of the Act defines a LTCH as ''* * * a hospital which has an *average* inpatient length of stay (as determined by the Secretary) of greater than *25* days'' (emphasis added). Although the Secretary has been granted broad authority in defining how the statute is implemented, section 1886(d)(1)(B)(iv)(I) of the Act clearly and unambiguously establishes the 25-day standard and the use of the average in the computation. The changes suggested by the commenters would require legislative action.

Comment: One commenter questioned why CMS decided to limit the average 25-day length of stay criterion to Medicare patients only, but in establishing the prospective payment system for IRFs, the ''75 percent rule'' was applied to all patients, regardless of payer source.

Response: The only requirement imposed by section 1886(d)(1)(B)(iv)(I) of the Act that differentiates a LTCH from another acute hospital is the average length of stay requirement. In addition, as stated earlier, our data revealed that a considerable proportion of Medicare patients are not receiving ''long-term care'' at LTCHs. The revision was proposed on the basis of the calculation of the greater than 25-day length of stay requirement, but did not restrict the patient census of the LTCH. Notwithstanding the proposed revision, a LTCH is free to admit and treat any patient it believes is clinically appropriate. Should that LTCH admit a short-stay Medicare patient, under this final rule the stay will be paid for under the short-stay outlier policy (section X.C. of this preamble and § 412.529 of the final regulations).

The objective of our revised policy is to establish a payment system for the care of Medicare patients at LTCHs that truly require the type of care and resources available at LTCHs and, therefore, incur costs to the Medicare system in accordance with such treatment. Should a LTCH admit many short-stay Medicare patients, it could well jeopardize its ability to participate under Medicare as a LTCH.

We are currently reviewing criteria for qualifying as an IRF, including the 75-percent rule, to determine whether any changes to the policy or administrative procedures for enforcing it are appropriate. Accordingly, rather than making changes to the types of patients used in calculating the 75 percent criterion at this time, we intend to address this issue as it affects IRFs when we address all of the qualifying criteria.

Comment: One commenter pointed out that as a LTCH improves its efficiency under the LTCH prospective payment system, the result could be shorter lengths of stay for Medicare patients, an outcome that would jeopardize the hospital's status as a LTCH.

Response: We agree with the commenter that as a LTCH becomes more efficient, its average length of stay may be reduced. Our experience with implementing other prospective payment systems under Medicare encourages us to believe that, even under circumstances of providing treatment for the most severely ill patient, quality of care can be preserved and even be improved once hospitals adapt to such a payment system. Our data, reflecting LTCHs throughout the country as well as acute care hospitals that treat patients who could also be treated in LTCHs, reveal a range of lengths of stay for the same diagnoses. If this reduction brings the hospital's average length of stay to 25 days or less, the hospital would lose its LTCH status. However, the requirements for both the DRG-based prospective payment system and the greater than 25-day average length of stay criterion are statutory. Any changes in these requirements must be pursued at the legislative level.

Comment: One commenter suggested that, since the proposed systems design for the LTCH prospective payment system was based on data gathered from all hospitals identified in our provider files as LTCHs, if CMS changed the criteria for payment under Medicare from a consideration of average lengths of stay for all patients to those of only Medicare patients, data from LTCHs that would lose their designation under this change should be excluded from payment modeling.

Response: Payment modeling for the LTCH prospective payment system was based on an analysis of data from existing LTCHs on their Medicare patients, costs, charges, and payments. The commenter appears to presume the following: That as of October 1, 2002, existing LTCHs not qualifying under the revised average length of stay requirement would lose their designation as LTCHS and that data from these hospitals should therefore not be included in payment simulations and policy determinations. We disagree with the commenter's points. The revised length of stay policy is a requirement of the prospective payment system for LTCHs and will become effective for any LTCH when that hospital becomes subject to the prospective payment system, that is, when the LTCH starts its first cost reporting period that begins on or after October 1, 2002. It is not appropriate to determine whether a hospital meets the new length of stay criterion for our modeling purposes. Changes in a hospital's status are effective only at the beginning of a cost reporting period and are effective for the entire cost reporting period under existing § 412.22(d). For example, if an existing LTCH with a cost reporting period that begins on October 1, 2002, does not meet the 25-day average length of stay criterion according to its fiscal intermediary's determination, the LTCH would not lose its LTCH status earlier than October 1, 2003, the beginning of its next cost reporting period. If in the 6 months prior to October 1, 2003, the hospital demonstrated an average length of stay of greater than 25 days for its Medicare patients, the hospital would continue to be paid as a LTCH even after October 1, 2003. We believe that LTCHs have a strong incentive to reevaluate their admission policies based on this new criterion, and that many of the LTCHs that presently may not meet the new requirement may achieve compliance when required and not lose their LTCH status. In addition, including the data from those hospitals that currently treat Medicare patients with an average length of stay of 25 days or less is appropriate. As explained in section X.A.2. of this preamble, in calculating the relative weights for each LTC–DRG, we adjusted the weight for short-stay outlier cases based on the average costs for that LTC–DRG. This adjustment allowed us to appropriately include more cases in the calculation of the LTC–DRG relative weight. Accordingly, we disagree with the commenter and did not remove data from those hospitals in developing the LTCH prospective payment system.

After consideration of public comments received on the proposed change in the average 25-day length of stay requirement for LTCHs, in this final rule we are adopting the proposed change as final with one clarification. Under this final rule, we will determine

the average inpatient length of stay in a LTCH, for purposes of section 1886(d)(1)(B)(iv)(I) of the Act, for the hospital's Medicare patients, but not non-Medicare patients. In addition, we are clarifying that the hospital's 25-day average Medicare inpatient length of stay includes all inpatient days (covered and noncovered) of Medicare patients' stays at the LTCH.

In addition, as we indicated in the proposed rule and as authorized under the statute, we are changing the methodology for determining the average inpatient length of stay for purposes of section 1886(d)(1)(B)(iv)(I) of the Act, but we are not changing the methodology for purposes of section 1886(d)(1)(B)(iv)(II) of the Act (§ 412.23(e)). For purposes of the latter provision (subclause (II)), we are retaining the current methodology (which includes non-Medicare as well as Medicare patients) because we believe that the considerations underlying the change in methodology for subclause (I) are not present under subclause (II). As discussed above, we are revising the methodology for purposes of the general definition of LTCH under subclause (I) because under the current methodology some hospitals that might not warrant exclusion from the acute care hospital inpatient prospective payment system have nevertheless obtained status as excluded hospitals. We believe that excluding non-Medicare patients in determining the average inpatient length of stay for purposes of subclause (I) would be more appropriate in identifying the hospitals that warrant exclusion under the general definition of LTCH in subclause (I). However, in enacting subclause (II), Congress provided an exception to the general definition of LTCH under subclause (I), and we have no reason to believe that the change in methodology for determining the average inpatient length of stay would better identify the hospitals that Congress intended to exclude under subclause (II).

We will monitor the types of hospitals that will qualify as LTCHs based on the revised 25-day length of stay criterion. It is possible that hospitals that currently qualify as either rehabilitation hospitals or psychiatric hospitals will now also qualify as LTCHs under the revised criterion and will choose to be LTCHs and be paid as LTCHs. We also will monitor whether the change in methodology for measuring the average length of stay in LTCHs will result in unanticipated shifts of patients to IRFs and psychiatric facilities. If this pattern of behavior is observed, we will address it at that time.

3. LTCHs Not Subject to the LTCH Prospective Payment System

In this final rule, we are specifying that only hospitals qualifying as LTCHs under the revised criteria described in section VIII.B.1. and 2. of this preamble and in revised § 412.23(e) by October 1, 2002, will be subject to the LTCH prospective payment system. Our treatment of new hospitals first qualifying as LTCHs on or after October 1, 2002, is addressed in section X.O. of this final rule.

The following hospitals are paid under special payment provisions, as described in existing § 412.22(c) and, therefore, will not be subject to the LTCH prospective payment system rules:

- Veterans Administration hospitals.
- Hospitals that are reimbursed under State cost control systems approved under 42 CFR Part 403.
- Hospitals that are reimbursed in accordance with demonstration projects authorized under section 402(a) of Public Law 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Public Law 92–603 (42 U.S.C. 1395b–1 (note)) (statewide all-payer systems, subject to the rate-of-increase test at section 1814(b) of the Act).
- Nonparticipating hospitals furnishing emergency services to Medicare beneficiaries.

C. Limitation on Charges to Beneficiaries

In accordance with existing regulations and for consistency with other established hospital prospective payment systems policies, we are specifying in this final rule that a LTCH may not charge a beneficiary for any services for which a full DRG payment is made by Medicare, even if the hospital's costs of furnishing services to that beneficiary are greater than the amount the hospital will be paid for those services under the LTCH prospective payment system (§ 412.507).

In the proposed rule under § 412.507(b), we specified that a LTCH receiving a prospective payment for a covered hospital stay may charge the Medicare beneficiary or other person only for the applicable deductible and coinsurance amounts under §§ 409.82, 409.83, and 409.87 of the existing regulations, and for items or services specified under § 489.20(a) of the existing regulations.

Comment: Some commenters expressed concern with the interaction of the proposed reduced per discharge payments for both very short-stay discharges and short-stay outliers and the requirements at proposed § 412.507 of the regulations which limit the amount the LTCH may bill the beneficiary and the effect this will have on Medigap payments.

Response: We have reviewed our proposed policy and have concluded that the language in proposed § 412.507 requires clarification. We proposed that beneficiaries who had exhausted their Part A coverage prior to two-thirds of the average length of stay (changed in this final rule to five-sixths of the geometric average length of stay) for each LTC–DRG to receive payments as short-stay outliers. The commenters' questions regarding the interaction of the short-stay outlier payment policy and Medigap indicate that the commenters also understood the intent of our short-stay policy. However, because the regulation text may not clearly indicate our intent, we are revising it to reflect this intended policy.

We are revising the language at § 412.507(b) to state that a LTCH may not bill the patient for more than the deductible and coinsurance amounts if the Medicare payment to the LTCH is the full LTC–DRG payment amount. However, if the Medicare payment is for a short-stay outlier case that is less than the full LTC–DRG payment amount, the LTCH may also charge the beneficiary for services for which the costs of those services or the days those services were provided were not a basis for calculating the Medicare short-stay outlier payment.

Proposed § 412.507(b) had stated that ''A long-term care hospital that receives payment * * * for a covered hospital stay (that is, a stay that includes at least one covered day) may charge the Medicare beneficiary or other person only for the applicable deductible and coinsurance amounts under §§ 409.82, 409.83, and 409.87 of this subchapter, and for items and services as specified under § 489.20(a) of this chapter.'' We are revising the language in the regulation, since that language could appear to have provided for payment of the *full* LTC–DRG payment (with no adjustment for a short-stay outlier) as long as the Medicare beneficiary had a stay that included at least one covered day. However, payments to LTCHs are adjusted for short-stay outliers. By revising § 412.507(b) in this final rule, we are clarifying the provision so that Medigap will be responsible for payment for the costs of those ''services provided during the stay that were not the basis for the short-stay payment.''

Comment: Several commenters have expressed concern that if Medigap insurers are only required to pay outlier rates once a patient has exhausted the Medicare-covered days (as is the case

under the existing acute care hospital inpatient prospective payment system and the IRF prospective payment system), LTCHs will most likely be seriously underpaid. The commenters asked for clarification that, under the LTCH prospective payment system, Medigap insurers are required to pay more than a mere continuation of the outlier rate since the full DRG payment will not be made in the case of an admission that occurs near the point at which the patient would exhaust his or her lifetime reserve days.

Specifically, the commenters asked that CMS issue a program memorandum to State insurance commissioners and issuers (commonly referred to as a Medigap bulletin) clarifying Medigap insurers' payment responsibilities under the new LTCH prospective payment system.

Response: During any covered Medicare Part A hospital benefit period, from days 61 through 90, every Medigap policy must pay the hospital coinsurance amount of one-fourth of the hospital deductible per day. For every lifetime reserve day (91st to the 150th day) that the policyholder uses, the Medigap insurer must pay the coinsurance amount of one-half of the hospital deductible. If the policyholder exhausts his or her lifetime reserve days, the Medigap insurer is required to provide ''coverage of the Medicare Part A eligible expenses for hospitalization paid at the DRG day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days.'' (Section 8.B(3) of the Model Regulation for Medicare Supplement Policies developed by the National Association of Insurance Commissioners (NAIC), which is incorporated by reference into section 1882 of the Act.) The term ''Medicare eligible expenses'' is defined in the NAIC Model Regulation as expenses of the kinds covered by Medicare, to the extent recognized as reasonable and medically necessary by Medicare.

We have consistently interpreted this language to require that the Medigap insurer make payments at the rate Medicare would have paid, had Medicare Part A hospital days not been exhausted. Under the acute care hospital inpatient prospective payment system, even if a patient has only one day of Medicare coverage remaining at the time of admission, Medicare pays the full DRG payment amount. A Medigap insurer would simply be responsible for outliers, if any. Similarly, since patients who exhaust their Medicare covered days are frequently in outlier status already, the Medigap insurer's responsibility is simply to continue paying what Medicare had been paying on the last day of coverage (that is, the outlier amount).

However, under the LTCH prospective payment system, the payment methodology is more complex. The LTC–DRG payment amount is based, in part, on how long the patient is expected to stay in the LTCH. The payment to the LTCH is determined after the patient is discharged, and will be reduced if the patient is discharged significantly earlier than the expected length of stay. Such stays are referred to as ''short-stay outliers.'' The fiscal intermediary follows the formulas specified in section X.C. of this preamble to determine the actual payment amount, which is expressed in terms of an adjustment to the LTC–DRG payment.

Accordingly, if a patient with a Medigap policy exhausts Medicare covered days before being discharged from a LTCH, the only way to determine the ''appropriate standard of payment'' for which the Medigap insurer is responsible is to use the same methodology used by Medicare. If the beneficiary exhausted Medicare benefits while he or she is still within the period of time considered to be a ''short-stay outlier,'' Medicare will make payment to the LTCH as if it were a short-stay, regardless of the length of stay. This means that the payment that happens to be attributed to the last day of Medicare coverage is not an accurate basis for calculating the Medigap insurer's responsibility. It may be more, or less, than the appropriate LTC–DRG payment ultimately applicable to the full stay. The Medigap insurer should use the LTCH methodology to calculate the amount Medicare would have paid for the full hospital stay, and deduct the amount paid by Medicare for the days prior to the exhaustion of benefits.

Comment: One commenter expressed concern that State Medicaid programs might determine the amount of Medicaid payment based on what Medicare would pay under the very short-stay policy. The existing regulations at § 447.205(b)(1) allows a State to use Medicare level of reimbursement without public notice. The commenter was concerned that very short-stay rates of payment could migrate to the Medicaid program and be used to pay hospitals without regard to the Medicaid average length of stay of a patient.

Response: Medicaid is a joint Federal and State program that assists with medical costs for people with low incomes and limited resources. Under the Medicaid program, States have the option to pay based on Medicare's payment principles or other alternative methodologies, subject to the overall Medicare upper payment limitation. While, for example, some State Medicaid programs may adopt the Medicare payment policy for short-stay cases, the Medicare program has no authority to dictate payment policy to State Medicaid programs. The commenter raised a concern with the proposed very short-stay discharge payment policy. As discussed earlier in this final rule, we have eliminated the very short-stay policy and included those stays in our short-stay policy in this final rule. The final short-stay policy will pay for those cases with lengths of stay at or below five-sixths of the geometric average length of stay for the LTC–DRG at the least of: (1) 120 percent of the LTC–DRG specific per diem; (2) 120 percent of the cost of the case; or (3) the full LTC–DRG payment.

In accordance with existing regulations and for consistency with other established hospital prospective payment systems policies, we are specifying in this final rule that a LTCH may not charge a beneficiary for any services for which a full LTC–DRG payment is made by Medicare, even if the hospital's costs of furnishing services to that beneficiary are greater than the amount the hospital will be paid under the LTCH prospective payment system (§ 412.507).

D. Medical Review Requirements

In accordance with existing regulations at §§ 412.44, 412.46, and 412.48 and for consistency with other established hospital prospective payment systems policies, we proposed and are specifying in this final rule that a LTCH must have an agreement with a Quality Improvement Organization (QIO) (formerly, a Peer Review Organization (PRO)) to have the QIO review, on an ongoing basis, the medical necessity, reasonableness, and appropriateness of hospital admissions and discharges and of inpatient hospital care for which outlier payments are sought; the validity of the hospital's diagnostic and procedural information; the completeness, adequacy, and quality of the services furnished in the hospital; and other medical or other practices with respect to beneficiaries or billing for services furnished to beneficiaries (§ 412.508(a)). In addition, we are requiring that, because payment under the prospective payment system is based in part on each patient's principal and secondary diagnoses and major procedures performed, as evidenced by the physician's entries in the patient's medical record, physicians must

complete an acknowledgement statement to that effect. We are applying the existing hospital requirements for the contents and filing of the physician acknowledgment statement (§ 412.508(b)).

Also, as proposed and now codified in this final rule, consistent with existing established hospital prospective payment system policies, if CMS determines, on the basis of information supplied by the QIO, that a hospital has misrepresented admissions, discharges, or billing information or has taken an action that results in the unnecessary admission or multiple admission of individuals entitled to Part A benefits or other inappropriate medical or other practices, CMS may deny payment (in whole or in part) for LTCH hospital services related to the unnecessary or subsequent readmission of an individual or require the hospital to take actions necessary to prevent or correct the inappropriate practice. Notice and appeal of a denial of payment will be provided under procedures established to implement section 1155 of the Act. In addition, a determination of a pattern of inappropriate admissions and billing practices that has the effect of circumventing the prospective payment system will be referred to the Department's Office of Inspector General, for handling in accordance with 42 CFR 1001.301.

E. Furnishing of Inpatient Hospital Services Directly or Under Arrangements

In accordance with existing regulations at § 414.15(m) and for consistency with other established hospital prospective payment systems policies, a LTCH must furnish covered services to Medicare beneficiaries either directly or under arrangements. Under § 412.509, the LTCH prospective payment will be payment in full for all covered inpatient hospital services, as defined in § 409.10 of the existing regulations. We will not pay any provider or supplier other than the LTCH for services furnished to a Medicare beneficiary who is an inpatient of the LTCH, except for those services that are not included as inpatient hospital services that are listed under existing § 412.50 (that is, physicians' services that meet the requirements of § 415.102(a) for payment on a fee schedule basis; physician assistant services as defined in section 1861(s)(2)(K)(i) of the Act; nurse practitioners and clinical nurse specialist services, as defined in section 1861(s)(2)(K)(ii) of the Act; certified nurse midwife services, as defined in section 1861(gg) of the Act; qualified psychologist services, as defined in section 1861(ii) of the Act; and services of an anesthetist, as defined in § 410.69).

F. Reporting and Recordkeeping Requirements

In this final rule, we are imposing the same recordkeeping and cost reporting requirements of §§ 413.20 and 413.24 of the existing regulations on all LTCHs that will participate in the LTCH prospective payment system (§ 412.511).

G. Transition Period for Implementation of the LTCH Prospective Payment System

In this final rule, we are providing for a 5-year transition period from cost-based reimbursement to fully Federal prospective payment for LTCHs as discussed in section X.N. of this preamble. During this period, two payment percentages will be used to determine a LTCH's total payment under the prospective payment system. The blend percentages are as follows:

Cost reporting periods beginning on or after	Prospective payment Federal rate percentage	Cost-based reimbursement rate percentage
October 1, 2002	20	80
October 1, 2003	40	60
October 1, 2004	60	40
October 1, 2005	80	20
October 1, 2006	100	0

Therefore, for a cost reporting period beginning on or after October 1, 2002, and before October 1, 2003, the total prospective payment will consist of 80 percent of the amount based on the current reasonable cost-based reimbursement system and 20 percent of the Federal prospective payment rate. The percentage of payment based on the LTCH prospective payment Federal rate will increase by 20 percent and the reasonable cost-based reimbursement rate percentage will decrease by 20 percent for each of the remaining 4 fiscal years in the transition period. For cost reporting periods beginning on or after October 1, 2006, Medicare payment to LTCHs will be determined entirely under the Federal prospective payment system methodology. Furthermore, LTCHs subject to the blend have the option to elect to be paid 100 percent of the Federal rate and not be subject to the 5-year transition.

Section X.N. of this final rule contains a detailed description of our payment policies during the 5-year transition period, the public comments received on our proposal and our responses to those comments, and a discussion of changes in the claims processing procedures for an interim period of October 1, 2002 until the date of the systems implementation, because of a delay in system changes necessary for us to accommodate claims processing under the LTCH prospective payment system.

H. Implementation Procedures

In the March 22, 2002 proposed rule, we proposed procedures for implementing the LTCH prospective payment system. Section X. of this final rule contains more details on the application of these procedures. In summary, upon the discharge of the patient from a LTCH, the LTCH must assign appropriate diagnosis and procedure codes from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM). Under a requirement of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, electronic health care claims, including Medicare claims, will be required to be in the new national standard claims format and medical data code sets in accordance with regulations at 45 CFR Parts 160 and 162. Beginning on October 16, 2002, a LTCH that is required to comply with the HIPAA Administrative Simplification Standards and that has not obtained an extension in compliance with the Administrative Compliance Act (Public Law 107–105) must comply with the standards at 42 CFR 162.1002 and 45 CFR 162.1102 and submit the completed claims form to its Medicare fiscal intermediary. The Medicare fiscal intermediary will enter the information into its claims

processing systems and subject it to a series of edits called the Medicare Code Editor (MCE). This editor is designed to identify cases that will require further review before classification into a LTC–DRG (described in section X. of this final rule).

After screening through the MCE, each claim will be classified into the appropriate LTC–DRG by the Medicare LTCH GROUPER. The LTCH GROUPER is specialized computer software based on the GROUPER utilized by the acute care hospital inpatient prospective payment system, which was developed as a means of classifying each case into a DRG on the basis of diagnosis and procedure codes and other demographic information (age, sex, and discharge status). Following the LTC–DRG assignment, the Medicare fiscal intermediary will determine the prospective payment by using the Medicare PRICER program, which accounts for hospital-specific adjustments.

As provided for under the acute care hospital inpatient prospective payment system, we are providing an opportunity for the LTCH to review the LTC–DRG assignments made by the fiscal intermediary (§ 412.513(c)). A hospital will have 60 days after the date of the notice of the initial assignment of a discharge to a LTC–DRG to request a review of that assignment. The hospital will be allowed to submit additional information as part of its request. The fiscal intermediary will review that hospital's request and any additional information and will decide whether a change in the LTC–DRG assignment is appropriate. If the intermediary decides that a different LTC–DRG should be assigned, the appropriate QIO, as specified in § 476.71(c)(2), will review the case. Following this 60-day period, the hospital will not be able to submit additional information with respect to the LTC–DRG assignment or otherwise revise its claim.

Comment: One commenter requested that we allow a LTCH 90 days instead of 60 days following the date of the notice of the initial assignment of a discharge to a LTC–DRG to request a review of that assignment during the 5-year phasein of the prospective payment system.

Response: We do not believe that an extension of the 60-day window for a LTCH to request a review of the LTC–DRG assignment by the fiscal intermediary is warranted. The ICD–9–CM coding system, on which the discharge from the LTCH will be based, has been in use in the United States since 1979, and all hospitals have been required to use this system for submission of Medicare claims. The patient classification system (LTC–DRGs) that we have chosen for the LTCH prospective payment system is based on the existing DRG system for acute care hospitals, which is familiar to coders, physicians, and providers. In addition, the timeframe is consistent with the existing 60-day timeframe allowed under the acute care hospital inpatient prospective payment system for hospitals to request review of DRG assignments by the fiscal intermediary (§ 412.60(d)). We do not believe that any change in the timeframe is warranted here because the provider is a LTCH.

As discussed in detail in section X.N. of this final rule, we will not have in place before January 1, 2003, the standard computer systems changes necessary to accommodate claims processing and payment under the LTCH prospective payment system. However, beginning October 16, 2002, we are requiring all LTCHs that are required to comply with the HIPAA Administrative Simplification Standards and that have not obtained an extension in compliance with the Administrative Compliance Act, Public Law 107–105, to submit their claims in compliance with the standards at 42 CFR 162.1002 and 45 CFR 162.1102 to their fiscal intermediaries using the ICD–9–CM coding. We intend that, as of January 1, 2003, the fiscal intermediary will reconcile the payment amounts that have been made to LTCHs for all covered inpatient hospital services furnished to Medicare beneficiaries from cost reporting periods that begin on or after October 1, 2002 until the date of the systems implementation, with the amounts that are payable under the LTCH prospective payment methodology. We will issue specific operational instructions to fiscal intermediaries and providers for completing and submitting Medicare claims under the LTCH prospective payment system through a Medicare Program Memorandum prior to the effective date of this final rule.

Although our computer systems will continue to make payments as in the past for an interim period after October 1, 2002, Medicare payments to LTCHs will be reconciled after January 1, 2003, based on the LTC–DRGs as determined by the ICD–9–CM codes recorded on the patient claims. Therefore, we urge LTCHs to focus on improved coding practices, which are addressed in section IX.E. of this final rule.

In proposed § 412.535, we proposed a schedule for publishing information on the LTCH prospective payment system for each fiscal year in the **Federal Register**, prior to the start of each fiscal year, on or before August 1. This cycle coincides with the statutorily mandated publication schedule for the acute care hospital inpatient prospective payment system. Section 1886(e)(5)(A) of the Act requires that, for the acute care hospital inpatient prospective payment system, the proposed rule be published in the **Federal Register** ''not later than the April 1 before each fiscal year; and the final rule, not later than the August 1 before such fiscal year.'' The Act imposes no such publication schedule for the LTCH prospective payment system. Therefore, in order to avoid concurrent publication of annual rules for these two systems, for purposes of administrative feasibility and efficiency, we will be considering a change in the publication schedule for updating the LTCH prospective payment system to July 1 of each year. We will address this issue in a future proposed rule.

IX. Long-Term Care Diagnosis-Related Group (LTC–DRG) Classifications

Section 307(b)(1) of Public Law 106–554 requires that the Secretary examine ''the feasibility and the impact of basing payment under such a system [the LTCH prospective payment system] on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of long-term care hospital patients as well as the use of the most recently available hospital discharge data.'' The LTC–DRG-based patient classification system we describe in this section is based on the existing CMS–DRG system used in the acute care hospital inpatient prospective payment system. As required by section 307(b)(1) of Public Law 106–554, we examined the feasibility and the impact of basing payment on the use of existing (or refined) hospital DRGs that have been modified to account for different resource use of LTCH patients. Therefore, an overview of pertinent facts about the existing CMS–DRG system is essential to an understanding of the LTC–DRGs that are employed in the LTCH prospective payment system.

As discussed below, we proposed the implementation of LTC–DRGs as a patient classification system for the LTCH prospective payment system. The LTC–DRGs classify patient discharges based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. We began the development of the LTC–DRGs system described in our proposed rule by using the CMS–DRGs that are currently used in the acute care hospital inpatient prospective payment system with the

most recent data available from the FY 2000 MedPAR file. For this final rule, we used data from the FY 2001 MedPAR file. In a departure from the acute care hospital inpatient prospective payment system, we also proposed the concept of the use of low volume LTC–DRGs (less than 25 LTCH cases) in determining the LTC–DRG weights, since LTCHs do not typically treat the full range of diagnoses as do acute care hospitals.

A. Background

The design and development of DRGs began in the late 1960s at Yale University. The initial motivation for developing the DRGs was the creation of an effective framework for monitoring the quality of care and the utilization of services in a hospital setting. The first large-scale application of the DRGs as a basis for payments was in the late 1970s in New Jersey. The New Jersey State Department of Health used DRGs as the basis of a prospective payment system in which hospitals were reimbursed a fixed DRG-specific amount for each patient treated. In 1972, section 223 of Public Law 92–603 originally authorized the Secretary to set limits on costs reimbursed under Medicare for inpatient hospital services.

In 1982, section 101(b)(3) of Public Law 97–248 required the Secretary to develop a legislative proposal for Medicare payments to hospitals, SNFs, and, to the extent feasible, other providers on a prospective basis. (See the September 1, 1983 **Federal Register** (48 FR 39754).) In 1983, Title VI of Public Law 98–21 added section 1886(d) to the Act, which established a national DRG-based hospital prospective payment system for Medicare inpatient acute care services. (See the January 3, 1984 **Federal Register** (49 FR 234).)

B. Historical Exclusion of LTCHs

Since the hospital inpatient DRG system had been developed from the cost and utilization experience of short-term, acute care hospitals, it did not account for the resource costs for the types of patients treated in hospitals such as rehabilitation, psychiatric, and children's hospitals, as well as LTCHs and rehabilitation and psychiatric units of acute care hospitals. Therefore, the statute (section 1886(d)(1)(B) of the Act) excluded these classes of hospitals and units from the prospective payment system for short-term acute care hospitals. The excluded hospitals and units continued to receive payments based on costs subject to a cap on each facility's per discharge costs during a base year, with a yearly update as set forth in Public Law 97–248. (Cancer hospitals were added to the list of excluded hospitals by section 6004(a) of Public Law 101–239.)

C. Patient Classifications by DRGs

1. Objectives of the Classification System

The DRGs are a patient classification system that provides a means of relating the type of patients treated by a hospital (that is, its case-mix) to the costs incurred by the hospital. In other words, DRGs relate a hospital's case-mix to the resource intensity experienced by the hospital. That is, a hospital that has a more complex case-mix treats patients who require more hospital resources.

While each patient is unique, groups of patients have demographic, diagnostic, and therapeutic attributes in common that determine their level of resource intensity. Given that the purpose of DRGs is to relate a hospital's case-mix to its resource intensity, it was necessary to develop a way of determining the types of patients treated and to relate each patient type to the resources they consumed. In the development of the existing CMS–DRGs, in order to aggregate patients into meaningful patient classes, it was essential to develop clinically similar groups of patients with similar resource intensity. The characteristics of a practical and meaningful DRG system were distilled into the following objectives:

- The patient characteristics should be limited to information routinely collected on hospital abstract systems.
- There should be a manageable number of DRGs encompassing all patients.
- Each DRG should contain patients with a similar pattern of resource intensity.
- DRGs should be clinically coherent, that is, containing patients who are similar from a clinical perspective.

Under a DRG-based system, patient information routinely collected include the following six data items: principal diagnosis, secondary or additional diagnoses, procedures, age, gender, and discharge status. All hospitals routinely collect this information. Therefore, a classification system based on these elements could be applied uniformly across hospitals.

Limiting the number of DRGs to a manageable total (that is, hundreds of patient classes instead of thousands) ensures that, for most of the DRGs, hospital discharge data would allow for meaningful comparative analysis to be performed. If a hospital has a sufficient number of cases in particular DRGs, this will allow for evaluations and comparisons of resource consumption by patients grouped to those DRGs, as compared to resources consumed by patients grouped to other DRGs. A large number of DRGs with only a few patients in each group would not provide useful patterns of case-mix complexity and cost performance.

The resource intensity of the patients in each DRG must be similar in order to establish a relationship between the case-mix of a hospital and the resources it consumes. (Similar resource intensity means that the resources used are relatively consistent across the patients in each DRG.) In implementing the original DRGs for the acute care hospital inpatient prospective payment system, we recognized that some variation in resource intensity would be present among the patients in each DRG, but the level of variation would be identifiable and predictable.

The last characteristic for an effective patient classification system is that the patients in a DRG are similar from a clinical perspective; that is, the definition of a DRG has to be clinically coherent. This objective requires that the patient characteristics included in the definition of each DRG be related to a common organ system or etiology, and that a specific medical specialty should typically provide care to the patients in a particular DRG.

2. DRGs and Medicare Payments

The LTC–DRGs used as the patient classification component of the LTCH prospective payment system correspond to the DRGs in the acute care hospital inpatient prospective payment system. We modified the CMS–DRGs for the LTCH prospective payment system by developing LTCH-specific relative weights to account for the fact that LTCHs generally treat patients with multiple medical problems. As background to understand our use of LTC–DRGs in the LTCH prospective payment system, we are presenting a brief review of the DRG patient classification system in the acute care hospital inpatient prospective payment system.

Generally, under the prospective payment system for short-term, acute care hospital inpatient services, Medicare payment is made at a predetermined, specific rate for each discharge; that payment varies by the DRG to which a beneficiary's stay is assigned. Cases are classified into DRGs for payment based on the following six data elements:

(1) Principal diagnosis.
(2) Up to eight additional diagnoses.
(3) Up to six procedures performed.
(4) Age.
(5) Sex.

(6) Discharge status of the patient.

Hospitals report the diagnostic and procedure information from the patient's hospital record using the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) codes on the uniform billing form currently in use, which is submitted to the Medicare fiscal intermediaries.

Medicare fiscal intermediaries enter the clinical and demographic information into their claims processing systems and subject it to a series of automated screening processes called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before assignment into a DRG can be made. During this process, the following type of cases are selected for further development:

- Cases that are improperly coded. (For example, diagnoses are shown that are inappropriate, given the sex of the patient. Code 68.6, Radical abdominal hysterectomy, would be an inappropriate code for a male.)
- Cases including surgical procedures not covered under Medicare (for example, organ transplant in a nonapproved transplant center).
- Cases requiring more information. (For example, ICD–9–CM codes are required to be entered at their highest level of specificity. There are valid 3-digit, 4-digit, and 5-digit codes. That is, code 136.3, Pneumocystosis, contains all appropriate digits, but if it is reported with either fewer or more than 4 digits, the claim will be rejected by the MCE as invalid.)
- Cases with principal diagnoses that do not usually justify admission to the hospital. (For example, code 437.9, Unspecified cerebrovascular disease. While this code is valid according to the ICD–9–CM coding scheme, a more precise code should be used for the principal diagnosis.)

After screening through the MCE and after any further development of the claims, cases are classified into the appropriate DRG by a software program called the GROUPER using the six data elements noted above.

The GROUPER is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the MedPAR file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights during our annual update.

The DRGs are organized into 25 Major Diagnostic Categories (MDCs), most of which are based on a particular organ system of the body; the remainder involve multiple organ systems (such as MDC 22, Burns). Accordingly, the principal diagnosis determines MDC assignment. Within most MDCs, cases are then divided into surgical DRGs and medical DRGs. While we do not anticipate large numbers of surgical cases in LTCHs, surgical DRGs are assigned based on a surgical hierarchy that orders operating room (O.R.) procedures or groups of O.R. procedures by resource intensity. Generally, the GROUPER does not recognize certain other procedures; that is, those procedures not surgical (for example, EKG), or minor surgical procedures generally not performed in an operating room and, therefore, not considered as surgical by the GROUPER (for example, 86.11, Biopsy of skin and subcutaneous tissue).

The medical DRGs are generally differentiated on the basis of diagnosis. Both medical and surgical DRGs may be further differentiated based on age, discharge status, and presence or absence of complications or comorbidities (CC). It should be noted that CCs are defined by certain secondary diagnoses not related to, or inherently a part of, the disease process identified by the principal diagnosis. (For example, the GROUPER would not recognize a code from the 800.0x series, Skull fracture, as a CC when combined with principal diagnosis 850.4, Concussion with prolonged loss of consciousness, without return to preexisting conscious level.) In addition, we note that the presence of additional diagnoses does not automatically generate a CC, as not all DRGs recognize a comorbid or complicating condition in their definition. (For example, DRG 466, Aftercare without History of Malignancy as Secondary Diagnosis, is based solely on the principal diagnosis, without consideration of additional diagnoses for DRG determination.)

D. LTC–DRG Classification System for LTCHs

Unless otherwise noted, our analysis of a per discharge DRG-based patient classification system is based on LTCH data from the FY 2001 MedPAR file, which contains hospital bills received through May 31, 2001, for hospital discharges occurring in FY 2001.

The patient classification system for the LTCH prospective payment system is based on the acute care hospital inpatient prospective payment system currently used for Medicare beneficiaries. Within the LTCH data set, as identified by provider number, we classified all cases to the CMS–DRGs. For the proposed rule, we identified individual LTCH cases with a length of stay equal to or less than 7 days and grouped them into two very short-stay LTC–DRGs, which we discussed in detail (67 FR 13434 and 13453–13454). However, as discussed later in section X.D. of this preamble, we are not adopting the proposed very short-stay discharge policy in this final rule. Instead, we are revising the short-stay outlier policy to take into account adjustments to payments for cases in which the stay at the LTCH is five-sixths of the geometric average length of stay for LTCHs.

As a result, the patient classification system consists of 510 DRGs that form the basis of the FY 2003 LTCH prospective payment system GROUPER. The 510 LTC–DRGs include two ''error DRGs''. As in the acute care hospital inpatient prospective payment system, we are including two error DRGs in which cases that cannot be assigned to valid DRGs will be grouped. These two error DRGs are DRG 469 (Principal Diagnosis Invalid as a Discharge Diagnosis) and DRG 470 (Ungroupable). (*See* 66 FR 40062, August 1, 2001.) The other 508 LTC–DRGs are the same DRGs used in the acute care hospital inpatient prospective payment system GROUPER for FY 2003 (Version 20.0). Therefore, cases submitted to the fiscal intermediaries will be processed using the data elements, MCE, and the GROUPER system already in place for the acute care hospital inpatient prospective payment system as described above.

Although payments to LTCHs will be made for the 3-month period following the effective date of the LTCH prospective payment system on October 1, 2002 under the existing electronic claims processing procedure, using ICD–9–CM coding, LTCH payments will be reconciled once the claims processing systems are changed to recognize the new LTCH prospective payment system. LTCHs will be paid based on the LTC–DRGs as determined by the ICD–9–CM codes recorded on the patient claims. Therefore, we would urge LTCHs to focus on improved coding practices, which are addressed in section IX.E. of this final rule.

E. ICD–9–CM Coding System

1. Historical Use of ICD–9–CM Codes

The Ninth Revision of the International Classification of Diseases, Clinical Modification, was adapted for use in the United States in 1979. This

coding system is the basis for the CMS–DRGs, upon which the LTC–DRGs are based. The ICD–9–CM codes have historically been used on all hospital inpatient claims submitted to CMS for payment. Volumes 1 and 2 of the ICD–9–CM coding scheme (including the *Official ICD–9–CM Guidelines for Coding and Reporting*) describe diagnoses, including diseases, injuries, impairments, other health problems, their manifestations, and their causes. The ICD–9–CM Volume 3 describes procedures performed on patients (including the *Official ICD–9–CM Guidelines for Coding and Reporting*). These guidelines are available through a number of sources, including the following Web site: *http://www.cdc.gov/nchs/data/icdguide.pdf.*

We note that should the Secretary, in the future, adopt a different medical data code set, hospitals participating in the Medicare program would be required to use that code set.

2. Uniform Hospital Discharge Data Set (UHDDS) Definitions

Because the assignment of a case to a particular LTC–DRG will determine the amount that will be paid for the case, it is important that the coding is accurate. Classifications and terminology used in the LTCH prospective payment system will be consistent with the ICD–9–CM and the UHDDS, as recommended to the Secretary by the National Committee on Vital and Health Statistics (''Uniform Hospital Discharge Data: Minimum Data Set, National Center for Health Statistics, April 1980'') and as revised in 1984 by the Health Information Policy Council (HIPC) of the U.S. Department of Health and Human Services.

We wish to point out that the ICD–9–CM coding terminology and the definitions of principal and other diagnoses of the UHDDS are consistent with the requirements of the HIPPA Administrative Simplification Act of 1996 (45 CFR Part 162). Furthermore, the UHDDS has been used as a standard for the development of policies and programs related to hospital discharge statistics by both governmental and nongovernmental sectors for over 30 years. In addition, the following definitions (as described in the 1984 Revision of the Uniform Hospital Discharge Data Set, approved by the Secretary of Health and Human Services for use starting January 1986) are requirements of the ICD–9–CM coding system, and have been used as a standard for the development of the CMS–DRGs:

- Diagnoses include all diagnoses that affect the current hospital stay.
- Principal diagnosis is defined as the condition established after study to be chiefly responsible for occasioning the admission of the patient to the hospital for care.
- Other diagnoses (also called secondary diagnoses or additional diagnoses) are defined as all conditions that coexist at the time of admission, that develop subsequently, or that affect the treatment received or the length of stay or both. Diagnoses that relate to an earlier episode of care that have no bearing on the current hospital stay are excluded.

All procedures performed will be reported. This includes those that are surgical in nature, carry a procedural risk, carry an anesthetic risk, or require specialized training.

As discussed in section VIII.H. of this final rule and consistent with the procedures for review of CMS–DRGs under the acute care hospital inpatient prospective payment system, we are providing LTCHs with a 60-day window after the date of the notice of the initial LTC–DRG assignment to request review of that assignment. Additional information may be provided by the LTCH to the fiscal intermediary as part of that review.

3. Maintenance of the ICD–9–CM Coding System

In September 1985, the ICD–9–CM Coordination and Maintenance (C&M) Committee was formed. This is a Federal interdepartmental committee, co-chaired by the National Center for Health Statistics (NCHS) and CMS, that is charged with maintaining and updating the ICD–9–CM system. The C&M Committee is jointly responsible for approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The C&M Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in the Tabular List and Alphabetic Index for Diseases, while CMS has lead responsibility for the ICD–9–CM procedure codes included in the Tabular List and Alphabetic Index for Procedures.

The C&M Committee encourages participation by health-related organizations in the above process. In this regard, the committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for representatives of recognized organizations in the coding field, such as the American Health Information Management Association (AHIMA) (formerly American Medical Record Association (AMRA)), the American Hospital Association (AHA), and various physician specialty groups, as well as physicians, medical record administrators, health information management professionals, and other members of the public to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and those comments submitted in writing, the C&M Committee formulates recommendations, which then must be approved by the heads of the respective agencies.

The C&M committee presents proposals for coding changes at two public meetings per year held at the CMS Central Office located in Baltimore, Maryland. The agenda and date of the meeting can be accessed on the CMS Web site at: *http://www.cms.gov/medicare/icd9cm.asp*.

After consideration of public comments received at both meetings and in writing, CMS publishes the coding changes in the annual proposed and final rules in the **Federal Register** on Medicare program changes to the short-term, acute care hospital inpatient prospective payment system. For example, new codes effective for discharges on or after October 1, 2002, can be found in Tables 6A through 6F of the August 1, 2002 hospital inpatient prospective payment system and rates for FY 2003 final rule (67 FR 50239 through 50243).

All changes to the ICD–9–CM coding system affecting DRG assignment are addressed annually in the acute care hospital inpatient prospective payment system proposed and final rules. Since the DRG-based patient classification system for the LTCH prospective payment system is based on the acute care hospital inpatient prospective payment system DRGs, these changes will also affect the LTCH prospective payment system DRG patient classification system. As coding changes may have an impact on DRG assignment, LTCHs will be encouraged to obtain and correctly use the most current edition of the ICD–9–CM codes. The official version of the ICD–9–CM codes is available on CD–ROM from the U.S. Government Printing Office. The FY 2003 version can be ordered by contacting the Superintendent of Documents, U.S. Government Printing

Office, Dept. 50, Washington, DC 20402–9329, telephone: (202) 512–1800. The stock number is not available at this time, but the price is $22.00. This version will go out of date on October 1, 2002. LTCHs can also order the CD–ROM online at *http://www.bookstore.gpo.gov*. In addition, private vendors also publish the ICD–9–CM Codes in book and electronic formats.

Copies of the procedure portion only of the ICD–9–CM Coordination and Maintenance Committee minutes can be obtained from the CMS Web site at: *http://www.cms.gov/medicare/icd9cm.asp*. There is a direct link to NCHS's Web site from this Web site. We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Donna Pickett, Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, NCHS Room 1100, 6525 Belcrest Road, Hyattsville, MD 20782. Comments may be sent by e-mail to: *dfp4@cdc.gov*.

Questions and comments concerning the procedure codes should be addressed to: Patricia E. Brooks, Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, CMS, Center for Medicare Management, Purchasing Policy Group, Division of Acute Care, Mail Stop C4–08–06, 7500 Security Boulevard, Baltimore, MD 21244–1850. Comments may be sent by e-mail to: *pbrooks@cms.hhs.gov*.

As noted above, the ICD–9–CM code changes that have been approved would become effective at the beginning of the Federal fiscal year, October 1. Of particular note to LTCHs will be the invalid diagnosis codes (Table 6C) and the invalid procedure codes (Table 6D) located in the annual proposed and final rules of the acute care hospital inpatient prospective payment system. Claims with invalid codes will not be processed by the Medicare claims processing system.

4. Coding Rules and Use of ICD–9–CM Codes in LTCHs

The emphasis on the need for proper coding cannot be overstated. Inappropriate coding of cases can adversely affect the uniformity of cases in each LTC–DRG and produce inappropriate weighting factors at recalibration.

Although payments to LTCHs will be made for the 3-month period following the effective date of the LTCH prospective payment system on October 1, 2002, using the existing electronic claims processing procedure, LTCH payments will be reconciled once the claims processing systems are changed to recognize the new LTCH prospective payment system. LTCHs will be paid based on the LTC–DRGs as determined by the ICD–9–CM codes recorded on the patient claims. Therefore, we are urging LTCHs to focus on improved coding practices which are addressed in section IX.E. of this final rule.

Because of our concern with correct coding practice, CMS has been working with AHA's Editorial Advisory Board on its publication, *Coding Clinic for ICD–9–CM,* since 1984. The *Coding Clinic* was developed to improve the accuracy and uniformity of medical record coding and is recognized in the industry as the definitive source of coding instruction. In 1987, the AHA created the cooperating parties, who have final approval of the coding advice provided in the *Coding Clinic*. The cooperating parties consist of the AHA, the AHIMA (formerly AMRA), CMS (formerly HCFA), and NCHS. As we participate on the Editorial Advisory Board and are one of the cooperating parties, we support the use of the Coding Clinic for coding advice for LTCHs. Information about the Coding Clinic can be obtained from the American Hospital Association, Central Office on ICD–9–CM, One North Franklin, Chicago, IL 60606, or at its Web site at *http://www.ahacentraloffice.org*.

Based on our review of claims data submitted by LTCHs, we believe it is worthwhile to review some of the basic instructions for coding. Our compelling need is based on the review of the data submitted by LTCHs. We note that the logic of the care patterns or place of treatment should not be considered in reviewing the following scenarios. Rather, these are merely examples to illustrate correct coding practice.

• Principal diagnosis—As noted above, the specific definition for principal diagnosis established by the 1984 Revision of the Uniform Hospital Discharge Data Set is ''the condition established after study to be chiefly responsible for occasioning the admission of the patient to the hospital for care.'' When a patient is discharged from an acute care facility and admitted to a LTCH, the appropriate principal diagnosis at the LTCH is not necessarily the same diagnosis for which the patient received care at the acute care hospital. For example, a patient who suffers a stroke (code 436, Acute, but ill-defined, cerebrovascular disease) is admitted to an acute care hospital for diagnosis and treatment. The patient is then discharged and admitted to a LTCH for further treatment of left-sided hemiparesis and dysphasia. The appropriate principal diagnosis at the LTCH would be a code from section 438 (Late effects of cerebrovascular disease), such as 438.20 (Late effects of cerebrovascular disease, Hemiplegia affecting unspecified side) or 438.12 (Late effects of cerebrovascular disease, Dysphasia).

Coding guidelines state that the residual condition is sequenced first followed by the cause of the late effect. In the case of cerebrovascular disease, the combination code describes both the residual of the stroke (for example, speech or language deficits or paralysis) and the cause of the residual (the stroke). Code 436 is used only for the first (initial) episode of care for the stroke that was in the acute care setting.

• Other diagnoses—Secondary diagnoses that have no bearing on the LTCH stay are not coded. For example, a patient who has recovered from pneumonia during a previous episode of care will not have a diagnosis code for pneumonia included in his or her list of discharge diagnoses. The pneumonia was not treated during this LTCH admission and, therefore, has no bearing on this case.

• Procedures—Codes reflecting procedures provided during a previous acute care hospital stay are not included because the procedure was not performed during this LTCH admission. For example, a patient with several chronic illnesses is admitted to an acute care hospital with a diagnosis of appendicitis for which he or she receives an appendectomy. The patient subsequently is transferred to a LTCH for medical treatment following surgery, and as a result of the multiple secondary conditions, the patient needs a higher level of care than he or she could receive at home with an HHA. In this situation, appendicitis will not be coded because this condition was resolved with the removal of the appendix. The procedure code for appendectomy will not be used on the LTCH record, as the procedure was performed in the acute care setting, not during the LTCH admission.

We will train fiscal intermediaries and providers on the new system. We also will issue manuals containing procedures as well as coding instructions to LTCHs and fiscal intermediaries following the publication of this final rule.

Comment: One commenter approved of CMS' intent to use ICD–9–CM codes and the *Official Guidelines for Coding and Reporting*, but noted that LTCHs will need clarification regarding which portion of the guidelines applies to them. The commenter specifically mentioned that the scenario presented as an example of selection of a principal diagnosis for a stroke patient (67 FR 13436) specifies ICD–9–CM code 438

(Late effects of cerebrovascular disease) rather than the 436 codes reportable by an acute care hospital, and noted that the LTCH admission should be considered a transfer.

Response: We intend that the *Official Guidelines for Coding and Reporting,* available at *http://www.cdc.gov/nchs/data/icdguide.pdf*, be used for LTCHs in the same manner that they are used by short-term acute care hospitals. The Guidelines state that selection of a principal diagnosis is always governed by the circumstances of the admission (Section 2, Selection of Principal Diagnosis). Further, we also recommend that the American Hospital Association's publication *Coding Clinic for ICD–9–CM* be used to improve the accuracy and uniformity of medical record coding in LTCHs, just as it is used in acute care hospitals.

In the example cited above, we referenced *Coding Clinic Fourth Quarter 1998* (pp. 88 through 89) for advice on coding CVA. Specifically, we stated that codes from categories 430–437 should be used throughout the initial episode of care for an acute cerebral hemorrhage or infarction. When codes from the 430–437 series are used, additional codes are needed to identify any sequelae present (for example, hemiplegia [a code from category 342] and aphasia [784.3]). Once a patient has completed the initial treatment or is discharged from care, codes from category 438 should be assigned instead of codes from the 430–437 series to identify residual neurologic deficits.

When a patient is discharged from a short-term acute care hospital and is admitted to a LTCH, the initial treatment period is over and it is assumed that the patient has maximized the benefits of hospitalization possible for that level of care. When the patient is then admitted to a LTCH, the focus of treatment has shifted from identification and treatment of the acute episode to treatment for the sequelae or residual deficits resulting from the acute process. We further note that, for coding purposes, a transfer from an acute care setting to a LTCH is, as defined at § 412.4(c), a discharge instead of a transfer. (For payment purposes, if the acute care DRG falls into the postacute transfer policy, regulations at § 412.4 govern.)

Therefore, we reiterate that our advice in the coding example cited in the proposed rule was correct. The appropriate principal diagnosis at the LTCH would be a code from section 438 (Late effects of cerebrovascular disease).

Comment: One commenter stated that CMS should ensure that its contractors (fiscal intermediaries) have been thoroughly trained and prepared for the LTCH prospective payment system before it is implemented. This commenter also suggested that fiscal intermediaries should be required to attest to their training and preparation. The commenter further suggested that CMS issue coding and training manuals to LTCHs as far in advance of implementation of the LTCH prospective payment system as possible.

Another commenter noted that current coding guidelines are vague insofar as they pertain to LTCHs, and called for the development of specific coding guidelines relating to the transfer of patients from acute care hospitals so that records will be appropriately coded for the LTCH prospective payment system.

Response: The fiscal intermediaries have been processing claims for acute care hospitals under the acute care hospital inpatient prospective payment system since its inception in 1983. We are confident that, given almost two decades of experience, they are prepared for, and capable of, processing LTCH claims for LTC–DRGs as well. However, the fiscal intermediaries will be receiving instruction and an overview of the new system before its implementation on October 1, 2002. The LTCH prospective payment system so closely mimics the acute care hospital inpatient prospective payment system that we have no overriding concerns about the fiscal intermediaries' capabilities. We do not believe an attestation by the fiscal intermediaries is necessary, and will monitor their performance as with the implementation of any new payment system.

The training that is to be provided by the fiscal intermediaries will be coordinated through CMS' Division of Provider Education and Training. That schedule has not yet been established, but information will be forthcoming to member hospitals from their fiscal intermediaries at a later date. This training will be given as soon as possible before the implementation of the LTCH prospective payment system.

With regard to coding issues, both the LTCHs and the short-term acute care hospitals should be applying the coding rules in the same manner. Since the inception of the acute care hospital inpatient prospective payment system, we have recommended that providers adopt and use the *ICD–9–CM Guidelines for Coding and Reporting* and the reporting definitions as set forth in the Uniform Hospital Discharge Data Set (UHDDS). We stated this recommendation in the proposed rule (67 FR 13435), and it was also discussed in the Standards for Electronic Transactions (65 FR 50312). In the proposed rule, we also expressed our concern for correct coding practice (67 FR 13436), and suggest that providers use the American Hospital Association's publication Coding Clinic for ICD–9–CM to improve the accuracy and uniformity of medical record coding and reporting. We take this opportunity to reiterate that we are one of the four cooperating parties on AHA's Editorial Advisory Board for *Coding Clinic*, and we support the use of *Coding Clinic* for coding advice for LTCHs.

The LTCHs will be using the same guidelines as the short-term, acute care hospitals. We anticipate that when coding questions arise, the AHA will manage them in the same manner for both types of facilities. That is, coding questions submitted to the AHA will be brought before their Editorial Advisory Board for consideration and resolution. Answers to questions will either be published in *Coding Clinic* or will be answered directly. Information concerning *Coding Clinic* should be obtained from the American Hospital Association, Central Office on ICD–9–CM, One North Franklin, Chicago, IL 60606, or at its Web site at *http://www.ahacentraloffice.org.*

With regard to the comment that development of specific coding guidelines be developed that take into account the ''transfer'' of patients from acute care hospitals to LTCHs, we again state that when a patient is discharged from a short-term, acute care hospital and is admitted to a LTCH, the initial treatment period is over. Subsequent admission to a LTCH would require that the reason for the admission be examined and the principal diagnosis determined based on the merits of that admission.

Comment: Two commenters expressed concern that CMS had inaccurately determined the volume and subsequent relative weights for two LTC–DRGs. Those LTC–DRGs are DRG 475 (Respiratory System Diagnosis with Ventilator Support) and DRG 87 (Pulmonary Edema and Respiratory Failure). Patients grouped to DRG 475 were given a proposed relative weight of 2.3043, while patients grouped to DRG 87, who are patients not requiring ventilator support, were given a higher proposed weight of 2.4202. The commenter believed that when providers submitted multiple interim bills, the procedure code reflecting ventilator use was not reported on each interim bill, resulting in an inaccurate number of cases in each of the two DRGs and ultimately resulting in an

inaccurate computation of the relative weights for both DRGs.

Response: While the relative weights of 475 and 87 are not a coding issue, the hospital's method of reporting the codes has impacted DRG assignments and relative weights. The impact of how codes are reported is an issue that we did not anticipate when we computed the original relative weights. When providers submit multiple interim bills to us, only the diagnostic and procedural code data contained on the most recent bill are extracted for the MedPAR data file. When the DRG relative weights for the proposed rule were computed, they were based on the most recent MedPAR data. However, this data set contained some cases that apparently did not include all the codes that would have been present on the first billing. In one of the most striking examples, in those situations when the procedure code for ventilator use was not included on the bill, the DRG shifted from 475 to 87. As a result of this finding, we have reviewed the MedPAR file and recalibrated the relative weights based on the first data submitted to MedPAR. Relative weights in Table 3 in the Addendum to this final rule reflect our revised calculations.

Relative to correct coding practice for hospitals submitting interim bills, we have consulted with the members of the four Cooperating Parties (as discussed in section VIII.E.4. of this preamble) and have determined that correct coding practice includes the following concepts:

- The principal diagnosis will remain the same throughout the entire LTCH stay, and will be reported as the principal diagnosis on each claim submitted.
- Secondary or additional diagnoses will be coded as these conditions develop and will be reported on each claim submitted. For example, a LTCH patient develops a condition, such as decubiti, that was not present on admission. The code for this condition should be added to the next claim submitted, and will continue to be coded, even if the decubiti are successfully treated and ultimately resolved before the patient's discharge from the LTCH. If all appropriate secondary diagnoses, up to eight, are not present on the final claim, the DRG may not be correctly assigned. It is the responsibility of the LTCH to make sure their coding practices reflect proper coding on their claims.
- All procedures performed in the LTCH will be reported. This means that if a patient is on a ventilator at the beginning of his or her LTCH stay, or is placed on a ventilator during that stay, but is subsequently weaned from the ventilator, the ventilator code will continue to appear on all claims. This is true for the duration of that LTCH stay. Likewise, if a patient has another type of procedure such as 54.51 (Laparoscopic lysis of peritoneal adhesions), code 54.51 should continue to be reported on each claim submitted for the duration of the patient's stay at the LTCH.

The above guidelines are in place for short-term, acute care hospitals and assure accurate and consistent coding practice. LTCHs are to follow the coding guidelines for the acute care hospitals to ensure that same accuracy and consistency. There will be only one DRG assigned per long-term care hospitalization; it will be assigned at the discharge. Therefore, it is mandatory that the coders continue to report the same principal diagnosis on all claims and include all diagnostic codes that coexist at the time of admission, that subsequently develop, or that affect the treatment received. Similarly, all procedures performed during that stay are to be reported on each claim.

X. Payment System for LTCHs

In accordance with section 123(a)(1) of Public Law 106–113, we are using a discharge as the payment unit for the LTCH prospective payment system for Medicare patients. We will update the per discharge payment amounts annually. The payment rates encompass both inpatient operating and capital-related costs of furnishing covered inpatient LTCH services, including routine and ancillary costs, but not the costs of bad debts, approved educational activities, blood clotting factors, anesthesia services furnished by hospital-employed nonphysician anesthetists or obtained under arrangement, or the costs of photocopying and mailing medical records requested by a QIO, which are costs paid outside the prospective payment system. Generally, consistent with current policy under § 412.42, beneficiaries may be charged only for deductibles, coinsurance, and noncovered services (for example, telephone and television). In addition, beneficiaries may be charged for services furnished during a LTCH stay that are not covered under Medicare. They may not be charged for the differences between the hospital's cost of providing covered care and the Medicare LTCH prospective payment amount for the full LTC–DRG. (For further details, see section VIII.C. of this preamble.)

We determine the LTCH prospective payment rates using relative weights to account for the variation in resource use among LTC–DRGs. During FY 2003, the LTCH prospective payment system will be ''budget neutral'' in accordance with section 123(a)(1) of Public Law 106–113. That is, total payments for LTCHs during FY 2003 will be projected to equal payments that would have been paid for operating and capital-related costs of LTCHs had this new payment system not been enacted. Budget neutrality is discussed in detail in section X.J.2.h. of this preamble.

Based on our analysis of the data, we will make additional payments to LTCHs for discharges meeting specified criteria as high-cost ''outliers.'' Outliers are cases that have unusually high costs, exceeding the LTC–DRG payment plus the fixed loss amount, as discussed in section X.J.6. of this preamble. In addition to a high-cost outlier policy, we also are implementing payment policies regarding short-stay outliers and interrupted stays (sections X.C. and X.E. of this preamble).

In general, we are adopting the provisions for determining the prospective payments under the LTCH prospective payment system that we included in our March 22, 2002 proposed rule. If changes in this final rule have been made as a result of comments received, we discuss those changes in the context of the policy areas specified in this section of the preamble.

The LTCH prospective payment system uses Federal prospective payment rates across 499 distinct LTC–DRGs. We have established a standard Federal payment rate based on the best available LTCH cost data. LTC–DRG relative weights are applied to the standard Federal rate to account for the relative differences in resource use across the LTC–DRGs. As finalized in this final rule, the system also includes adjustments for short-stay outliers, differences in area wages (transitioned over 5 years), COLAs in Alaska and Hawaii, and high-cost outlier cases, as described in sections X.D., X.J.1., X.J.5., and X.J.6. of this preamble, respectively.

The standard Federal prospective payment rate, which is the basis for determining Federal payment rates for each LTC–DRG, is determined based on average costs from a base period, and also reflects the combined aggregate effects of the payment weights and other policies discussed in this section. In discussing the methodology, we begin by describing the various adjustments and factors that were considered in establishing the standard Federal prospective payment rate. We developed prospective payments for LTCHs using the following major steps:

- Develop the LTC–DRG relative weights.
- Determine appropriate payment system adjustments.
- Calculate the budget neutral standard Federal prospective payment rate.
- Calculate the Federal LTC–DRG prospective payments.

A detailed description of each step and a discussion of our policies for special cases, payment adjustments, phase-in implementation, and other policies follow.

A. Development of the LTC–DRG Relative Weights

1. Overview of Development of the LTC–DRG Relative Weights

As previously stated, one of the primary goals for the implementation of the LTCH prospective payment system is to pay each LTCH an appropriate amount for the efficient delivery of care to Medicare patients. The system must be able to account adequately for each LTCH's case-mix in order to ensure both fair distribution of Medicare payments and access to adequate care for those Medicare patients whose care is more costly. To accomplish these goals, we adjust the standard Federal prospective payment system rate by the LTC–DRG relative weights in determining payment to LTCHs for each case.

In this payment system, relative weights for each LTC–DRG are a primary element used to account for the variations in cost per discharge and resource utilization among the payment groups (§ 412.515). To ensure that Medicare patients classified to each LTC–DRG have access to an appropriate level of services and to encourage efficiency, we calculate a relative weight for each LTC–DRG that represents the resources needed by an average inpatient LTCH case in that LTC–DRG. For example, cases in a LTC–DRG with a relative weight of 2 will, on average, cost twice as much as cases in a LTC–DRG with a weight of 1.

To calculate the relative weights in the proposed rule, we obtained charges from FY 2000 Medicare hospital bill data from the June 2001 update of the MedPAR file, and we used Version 18.0 of the CMS GROUPER (used under the acute care hospital inpatient prospective payment system for FY 2001). In this final rule, we recalculated the relative weights based on the most recent MedPAR data (that is, the March 2002 update of the FY 2001 Medicare hospital bill data, which include bills submitted through March 31, 2002) and Version 20.0 of the CMS GROUPER (used under the acute care hospital inpatient prospective payment system for FY 2003). As we stated in the proposed rule, we have recalculated the LTC–DRG relative weights based on the most recent available data in this final rule. At the time the proposed rule was published, we anticipated that Version 19 of the CMS GROUPER (used under the hospital inpatient prospective payment system for FY 2002) would be the most recently available. However, due to the recent publication of the FY 2003 acute care hospital inpatient prospective payment system final rule, we were able to use the Version 20 of the CMS GROUPER.

As we discuss in further detail in section X.K.2.a. of this preamble, based on comments regarding the data used in the development of the proposed LTCH prospective payment system, we have reconsidered the appropriateness of including data from LTCHs that are all-inclusive rate providers (AIRPs) and LTCHs that are reimbursed in accordance with demonstration projects authorized under section 402(a) of Public Law 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Public Law 92–603 (42 U.S.C. 1395b–1).

Since all-inclusive rate providers have no charge structure, it is not feasible to use charge data for these LTCHs to accurately project variations in Medicare patient resource use. We do not believe their charges are at all comparable to the data for other LTCHs and, therefore, believe that including data from AIRPs would have the potential to inappropriately skew relative weight determinations. As a result, in order to eliminate the influence that including AIRPs would have on the LTC–DRG relative weights, we have excluded the data of the 17 AIRPs in the calculation of the final LTC–DRG relative weights. Excluding the AIRPs' data is consistent with the methodology used in establishing the IRF prospective payment system (66 FR 41351, August 7, 2001). In addition, LTCHs that are reimbursed in accordance with demonstration projects are not subject to the LTCH prospective payment system. Therefore, we determined it would not be appropriate to include their data in the development of the LTC–DRG relative weights, and we have excluded the data from these three LTCHs in calculating the final LTC–DRG relative weights.

Comment: One commenter inquired whether data on ''charges'' and ''length of stay'' from the MedPAR cases used to determine the proposed LTC–DRG relative weights were covered charges and covered days, rather than total charges and total days.

Response: For the proposed rule, we used covered charges and covered days in the determination of the proposed LTC–DRG relative weights. However, in this final rule, we have reevaluated this decision and determined that consistent with our use of total days in the LTCH length of stay qualification formula (section VIII.B.2. of this preamble), it is appropriate to use total days and total charges in the calculation of the LTC–DRG relative weights. As we explain in section VIII.B.2. of this final rule, in our determination of whether a hospital qualifies for payment under the LTCH prospective payment system, total patient days, rather than covered days, will be used in computing a LTCH's required average length of stay of greater than 25 days for Medicare patients. We are adopting this policy because we believe that a criterion based on the total number of treatment days for Medicare patients is a better indication of the appropriateness of the patient's stay at a LTCH than the number of days covered by Medicare for payment purposes.

In the same way that counting total days better reflects whether or not the patient was appropriately hospitalized at a LTCH, charges for the entire length of stay (for example, charges for both the covered and noncovered days of the stay) will more accurately reflect the clinical resources expended in providing care for a specific diagnosis than will charges based only on Medicare-covered days. We believe that the number of covered days for individual Medicare patients treated in LTCHs may not be a reliable source of clinical information for determining and recalibrating the LTC–DRG relative weights. For example, a patient with a diagnosis of a pulmonary embolism would be grouped to LTC–DRG 78, which has an average length of stay of 20.5 days. If that patient only had 2 days of Medicare coverage remaining such that only those 2 covered days and charges were included in determining the LTC–DRG relative weights, those numbers would not represent the actual clinical services required to treat a patient in that LTC–DRG. Therefore, we have revised our methodology and have calculated the final LTC–DRG relative weights using total charges and total days. Using total charges and total lengths of stay enables us to more accurately measure the resources expended in treating a particular LTC–DRG as compared to other LTC–DRGs. This will allow us to establish a clinically driven determination of relative weights (unaffected by a patient's number of covered days of

care) and, therefore, will result in more appropriate payments.

By nature, LTCHs often specialize in certain areas, such as ventilator-dependent patients and rehabilitation and wound care. Some case types (DRGs) may be treated, to a large extent, in hospitals that have, from a perspective of charges, relatively high (or low) charges. Such nonarbitrary distribution of cases with relatively high (or low) charges in specific LTC–DRGs has the potential to inappropriately distort the measure of average charges. To account for the fact that cases may not be randomly distributed across LTCHs, as we stated in the proposed rule, we use a hospital-specific relative value method to calculate relative weights. We believe this method will remove this hospital-specific source of bias in measuring average charges. Specifically, we reduce the impact of the variation in charges across providers on any particular LTC–DRG relative weight by converting each LTCH's charge for a case to a relative value based on that LTCH's average charge. As MedPAC noted in its June 2000 Report to Congress, the hospital-specific relative value method eliminates distortion in the weights due to systematic differences among hospitals in the level of charge markups or costs (p. 58). The case-mix index is the average case weight (adjusted to eliminate the effect of short-stay outliers that are described in section X.C. of this preamble) for cases at each LTCH.

As we explained in the proposed rule (67 FR 13437), under the hospital-specific relative value method, we standardize charges for each LTCH by converting its charges for each case to hospital-specific relative charge values and then adjusting those values for the LTCH's case-mix. The adjustment for case-mix is needed to rescale the hospital-specific relative charge values (which, by definition, averages 1.0 for each LTCH). The average relative weight for a LTCH is its case-mix, so it is reasonable to scale each LTCH's average relative charge value by its case-mix. In this way, each LTCH's relative charge value is adjusted by its case-mix to an average that reflects the complexity of the cases it treats relative to the complexity of the cases treated by all other LTCHs (the average case-mix of all LTCHs).

We standardize charges for each case by first dividing the adjusted charge for the case (adjusted for short-stay outliers as described in section X.C. of this preamble) by the average adjusted charge for all cases at the LTCH in which the case was treated. The average adjusted charge reflects the average intensity of the health care services delivered by a particular LTCH and the average cost level of that LTCH. The resulting ratio is multiplied by that LTCH's case-mix index to determine the standardized charge for the case.

As we explained in the proposed rule, multiplying by the LTCH's case-mix index accounts for the fact that the same relative charges are given greater weight in a hospital with higher average costs than they would at a LTCH with low average costs which is needed to adjust each LTCH's relative charge value to reflect its case-mix relative to the average case-mix for all LTCHs. Because we standardize charges in this manner, we count charges for a Medicare patient at a LTCH with high average charges as less resource intensive than they would be at a LTCH with low average charges. For example, a $10,000 charge for a case in a LTCH with an average adjusted charge of $17,500 reflects a higher level of relative resource use than a $10,000 charge for a case in a LTCH with the same case-mix, but an average adjusted charge of $35,000. We believe that the adjusted charge of an individual case more accurately reflects actual resource use for an individual LTCH because the variation in charges due to systematic differences in the markup of charges among LTCHs is taken into account.

In order to account for LTC–DRGs with low volume (that is, with fewer than 25 LTCH cases), as we discussed in the proposed rule (67 FR 13438), we group those low volume LTC–DRGs into one of five categories (quintiles) based on average charges, for the purposes of determining relative weights. For this final rule, using LTCH cases from the March 2002 update of the FY 2001 MedPAR file, we identified 161 LTC–DRGs that contained between 1 and 24 cases. This list of LTC–DRGs was then divided into one of the five low volume quintiles, each containing a minimum of 32 LTC–DRGs (161/5 = 32 with 1 LTC–DRG as a remainder). We made an assignment to a specific quintile by sorting the 161 low volume DRGs in ascending order by average charge. Since the number of LTC–DRGs with less than 25 LTCH cases is not evenly divisible by five, the average charge of the low volume LTC–DRG was used to determine which quintile received the additional LTC–DRG. After sorting the 161 volume LTC–DRGs in ascending order, the first fifth of low volume (32) LTC–DRGs with the lowest average charge are grouped into Quintile 1. This process was repeated through the remaining low volume LTC–DRGs so that 4 quintiles contained 32 LTC–DRGs and 1 quintile contained 33 LTC–DRGs. Since the average charge of the 97th LTC–DRG in the sorted list is closer to the previous LTC–DRG's average charge (assigned to Quintile 3) than to the average charge of the 98th LTC–DRG on the sorted list (to be assigned to Quintile 4), it is placed into Quintile 3. The highest average charge cases are grouped into Quintile 5. In order to determine the relative weights for the LTC–DRGs with low volume, we used the five low volume quintiles described above. The composition of each of the five low volume quintiles shown below in Chart 2 are used in determining the final LTC–DRG relative weights for FY 2003. We determine a relative weight and average length of stay for each of the five low volume quintiles using the formula applied to the regular LTC–DRGs (25 or more cases), as described in section X.A.2. of this final rule. We assign the same relative weight and average length of stay to each of the LTC–DRGs that make up that low volume quintile. We note that as this system is dynamic, it is entirely possible that the number and specific type of LTC–DRGs with a low volume of LTCH cases will vary in the future. We use the best available claims data in the MedPAR file to identify low volume LTC–DRGs and to calculate the relative weights based on our methodology.

CHART 2.—COMPOSITION OF LOW VOLUME QUINTILES

LTC–DRG	Description
	Quintile 1
021	VIRAL MENINGITIS
045	NEUROLOGICAL EYE DISORDERS
047	OTHER DISORDERS OF THE EYE AGE >17 W/O CC
066	EPISTAXIS
067	EPIGLOTTITIS
072	NASAL TRAUMA & DEFORMITY
084	MAJOR CHEST TRAUMA W/O CC
095	PNEUMOTHORAX W/O CC
118	CARDIAC PACEMAKER DEVICE REPLACEMENT
150	PERITONEAL ADHESIOLYSIS W CC
157	ANAL & STOMAL PROCEDURES W CC
208	DISORDERS OF THE BILIARY TRACT W/O CC
224	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR
234	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY
284	MINOR SKIN DISORDERS W/O CC
290	THYROID PROCEDURES
301	ENDOCRINE DISORDERS W/O CC
307	PROSTATECTOMY W/O CC
311	TRANSURETHRAL PROCEDURES W/O CC
329	URETHRAL STRICTURE AGE >17 W/O CC
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17
348	BENIGN PROSTATIC HYPERTROPHY W CC
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC
360	VAGINA, CERVIX & VULVA PROCEDURES
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC
410	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC
494	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC
522	ALCOHOL/DRUG ABUSE OR DEPENDENCE W REHABILITATION THERAPY W/O CC
	Quintile 2
017	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC
022	HYPERTENSIVE ENCEPHALOPATHY
031	CONCUSSION AGE >17 W CC
044	ACUTE MAJOR EYE INFECTIONS
046	OTHER DISORDERS OF THE EYE AGE >17 W CC
055	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES
068**	OTITIS MEDIA & URI AGE >17 W CC
108	OTHER CARDIOTHORACIC PROCEDURES
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC
178	UNCOMPLICATED PEPTIC ULCER W/O CC
206	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC
237	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC
273	MAJOR SKIN DISORDERS W/O CC
276	NON-MALIGANT BREAST DISORDERS
305	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY
324	URINARY STONES W/O CC
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC
341	PENIS PROCEDURES
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS
427	NEUROSES EXCEPT DEPRESSIVE
432	OTHER MENTAL DISORDER DIAGNOSES
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC
447	ALLERGIC REACTIONS AGE >17
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC
467	OTHER FACTORS INFLUENCING HEALTH STATUS
479	OTHER VASCULAR PROCEDURES W/O CC
520	CERVICAL SPINAL FUSION W/O CC
	Quintile 3
043	HYPHEMA

CHART 2.—COMPOSITION OF LOW VOLUME QUINTILES—Continued

LTC–DRG	Description
068*	OTITIS MEDIA & URI AGE >17 W CC
069	OTITIS MEDIA & URI AGE >17 W/O CC
116	OTH PERM CARD PACEMAK IMPL OR PTCA W CORONARY ARTERY STENT IMPLNT
124	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG
168	MOUTH PROCEDURES W CC
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC
177	UNCOMPLICATED PEPTIC ULCER W CC
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY
218	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W CC
227	SOFT TISSUE PROCEDURES W/O CC
266	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC
275***	MALIGNANT BREAST DISORDERS W/O CC
295	DIABETES AGE 0–35
299	INBORN ERRORS OF METABOLISM
306	PROSTATECTOMY W CC
308	MINOR BLADDER PROCEDURES W CC
336	TRANSURETHRAL PROSTATECTOMY W CC
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES
367	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC
400	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS
486	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA
492	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS
493	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC
498	SPINAL FUSION W/O CC
508	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA
509	FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA
511	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA
519	CERVICAL SPINAL FUSION W CC
Quintile 4	
004	SPINAL PROCEDURES
005	EXTRACRANIAL VASCULAR PROCEDURES
008	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC
146	RECTAL RESECTION W CC
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC
193	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC
225	FOOT PROCEDURES
226	SOFT TISSUE PROCEDURES W CC
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC
304	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC
310	TRANSURETHRAL PROCEDURES W CC
317	ADMIT FOR RENAL DIALYSIS
342	CIRCUMCISION AGE >17
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM
389	FULL TERM NEONATE W MAJOR PROBLEMS
401	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC
414***	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC
421	VIRAL ILLNESS AGE >17
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL
505	EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT
515	CARDIAC DEFIBRILATOR IMPLANT W/O CARDIAC CATH
518	PERCUTANEOUS CARDIVASCULAR PROC W/O CORONARY ARTERY STENT OR AMI
Quintile 5	
001	CRANIOTOMY AGE >17 W CC

CHART 2.—COMPOSITION OF LOW VOLUME QUINTILES—Continued

LTC–DRG	Description
002	CRANIOTOMY AGE >17 W/O CC
061	MYRINGOTOMY W TUBE INSERTION AGE >17
063	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES
075	MAJOR CHEST PROCEDURES
077	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC
110	MAJOR CARDIOVASCULAR PROCEDURES W CC
111	MAJOR CARDIOVASCULAR PROCEDURES W/O CC
115	PRM CARD PACEM IMPL W AMI,HRT FAIL OR SHK,OR AICD LEAD OR GNRTR P
125	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG
191	PANCREAS, LIVER & SHUNT PROCEDURES W CC
197	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC
198	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY
231	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR
288	O.R. PROCEDURES FOR OBESITY
303	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM
312	URETHRAL PROCEDURES, AGE >17 W CC
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS
476	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS
488	HIV W EXTENSIVE O.R. PROCEDURE
497	SPINAL FUSION W CC
499	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC
501	KNEE PROCEDURES W PDX OF INFECTION W CC
503	KNEE PROCEDURES W/O PDX OF INFECTION
506	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA
517	PERCUTANEOUS CARDIVASCULAR PROC W NON-DRUG ELUTING STENT W/O AMI

* One of the original 161 low volume LTC–DRGs initially assigned to a different low volume quintile; reassigned to this low volume quintile in addressing nonmonotonicity (see step 4 below).

** One of the original 161 low volume LTC–DRGs initially assigned to this low volume quintile; reassigned to a different low volume quintile in addressing nonmonotonicity (see step 4 below).

*** One of the original 161 low volume LTC–DRGs initially assigned to this low volume quintile; removed from the low volume quintiles in addressing nonmonotonicity (see step 4 below).

After grouping the cases in the appropriate LTC–DRG, we calculate the relative weights in this final rule by first removing statistical outliers and cases with a length of stay of 7 days or less. Next we adjust the number of cases in each LTC–DRG for the effect of short-stay outlier cases under § 412.529. The short-stay adjusted discharges and corresponding charges are used to calculate ''relative adjusted weights'' in each LTC–DRG using the hospital-specific relative value method described above. We describe each of these steps in greater detail in section X.A.2. of this preamble.

Comment: Two commenters notified us of a data problem regarding the proposed LTC–DRG relative weight values that were determined using MedPAR (claims) data for FYs 2000 and 2001. The commenters were concerned that two high-volume and high-resource use LTC–DRGs were incorrectly weighted and that this error would not only result in inaccurate payments for certain LTCHs, but also would have negative implications for the accuracy of the overall payment system.

Response: Following notification of this problem, we researched the commenter's claims and determined that, given the long stays at LTCHs, some providers had submitted multiple bills for payment under the TEFRA reimbursement system for the same stay. In establishing the LTC–DRG relative weights in the proposed rule, these claims from the MedPAR file were run through the LTCH GROUPER and used in determining the proposed relative weights for each LTC–DRG. Based upon our research, we became aware of the following situation: in certain LTCHs, hospital personnel apparently reported a different principal diagnosis on each bill since, under the TEFRA system, payment was not dependent upon principal diagnosis as it is under a DRG-based system. Moreover, since we discovered that only data from the final bills were being extracted for the MedPAR file, it is possible that the original MedPAR file would not be receiving the correct principal diagnosis. In this final rule, we have addressed the problem by identifying all LTCH cases in the MedPAR file for which multiple bills were submitted. For each of these cases, beginning with the first bill and moving forward consecutively through subsequent bills for that stay, we recorded the first unique diagnosis codes up to 10 and the first unique procedure codes up to 10. We then used these codes to group each case to a LTC–DRG. Using this methodology, we note in this final rule that there are significant changes in the relative weights for several LTC–DRGs and consequential changes to the relative weights for the other LTC–DRGs. We recognize the impact that this information had on the accuracy and integrity of the LTCH prospective payment system and appreciate the commenters who brought this issue to our attention and allowed us to address it.

2. Steps for Calculating the Relative Weights

In the March 22, 2002 proposed rule (67 FR 13441–13445), we described the steps for calculating the proposed relative weights for the proposed LTC–DRGs under the proposed LTCH prospective payment system. Proposed Step 1 was ''Adjust charges for the effects of short-stay outliers'' and proposed Step 2 was ''Remove statistical outliers.'' As we have stated in Question 5.8 of the ''Frequently Asked Questions'' posted on the CMS website, the stated order of proposed Step 1 and proposed Step 2 was inadvertently reversed in the proposed rule. In fact, statistical outliers were removed *before* short-stay outliers were adjusted. These steps are shown in the correct order in the description given below for calculating the final relative weights. In addition, in this final rule, we are adding a new step as a result of our elimination of the proposed very short-stay discharge policy discussed in sections X.C. and X.D. of this preamble.

Step 1—Remove statistical outliers.

The first step in the calculation of the relative weights is to remove statistical outlier cases. As we stated in the proposed rule, we define statistical outliers as cases that are outside of 3.0 standard deviations from the mean of the log distribution of both charges per case and the charges per day for each LTC–DRG. These statistical outliers are removed prior to calculating the relative weights. We believe that they may represent aberrations in the data that distort the measure of average resource use. Including those cases in the calculation of the relative weights could result in an inaccurate weight that does not truly reflect relative resource use among the LTC–DRGs. Thus, removing statistical outliers results in more appropriate LTC–DRG relative weights and payments.

Step 2—Remove cases with a length of stay of 7 days or less.

In the proposed calculation of the LTC–DRG relative weights, we did not include cases with a length of stay of 7 days or less since we had proposed to assign those cases to one of two very short-stay discharge LTC–DRGs (section X.C. of this preamble). Thus, in the proposed rule, the costs of cases with stays of 7 days or less were factored into those very short-stay discharge LTC–DRG relative weights. As we discuss in further detail in sections X.C. and X.D. of this preamble, even though in this final rule we are now including cases with a length of stay of 7 days or less under the short-stay outlier policy (§ 412.529), we continue to believe that, generally, cases with a length of stay 7 days or less do not belong in a LTCH. Because these cases do not use the same amount or type of resources as typical inlier cases, our simulations have indicated that including these cases in the calculations of the LTC–DRG relative weights would significantly bias payments against inlier cases. (For purposes of payment under the LTCH prospective payment system, an ''inlier case'' means a stay in which Medicare-covered days exceed five-sixths of the geometric average length of stay for a particular LTC–DRG, and the estimated costs for a particular LTC–DRG, and the estimated costs for a particular discharge do not exceed the high-cost outlier threshold (that is, the adjusted LTCH prospective payment system payment for a particular LTC–DRG plus a fixed-loss amount).) The LTC–DRG relative weights should reflect the average of resources used on representative cases of a specific type. Therefore, we continue to believe that cases with stays of 7 days or less should not be included in the calculation of the relative weights.

Stays of 7 days or less generally do not fully receive or benefit from treatment that is typical in a LTCH stay and full resources are often not used in the earlier stages of admission to a LTCH. If we did include stays of 7 days or less in the computation of the LTC–DRG relative weights, the value of many weights would decrease and, therefore, inlier payments would decrease to a level that may no longer be appropriate. We do not believe that it is appropriate to compromise the integrity of the payment determination for those LTCH inlier cases that actually benefit from and receive a full course of treatment at a LTCH, in order to include data from these very short-stays. Thus, in determining the final LTC–DRG relative weights, we have removed cases with a length of stay of 7 days or less.

Step 3—Adjust charges for the effects of short-stay outliers.

The third step in the calculation of the relative weights is to adjust each LTCH's charges per discharge for short-stay outlier cases (that is, a patient with

a length of stay that is less than or equal to five-sixths the average length of stay of the LTC–DRG as described in section X.C. of this final rule).

We make this adjustment by counting a short-stay outlier as a fraction of a discharge based on the ratio of the length of stay of the case to the average length of stay for the LTC–DRG for nonshort-stay outlier cases. This has the effect of proportionately reducing the impact of the lower charges for the short-stay outlier cases in calculating the average charge for the LTC–DRG. This process produces the same result as if the actual charges per discharge of a short-stay outlier case were adjusted to what they would have been had the patient's length of stay been equal to the average length of stay of the LTC–DRG.

As we stated in the proposed rule, counting short-stay outlier cases as full discharges with no adjustment in determining the relative weights would lower the relative weight for affected LTC–DRGs because the relatively lower charges of the short-stay outlier cases bring down the average charge for all cases within a LTC–DRG. This would result in an ''underpayment'' to nonshort-stay outlier cases and an ''overpayment'' to short-stay outlier cases. Therefore, in this final rule, we are adjusting for short-stay outlier cases in this manner since it will result in more appropriate payments for all LTCH cases. The result of step 3 is that each LTCH's average cost per discharge is adjusted for short-stay outliers (as described above) before calculating the LTC–DRG relative weights on an iterative basis (step 4) using the hospital-specific relative value method.

Step 4—Calculate the LTC–DRG relative weights on an iterative basis.

As explained in the proposed rule, the process of calculating the LTC–DRG relative weights is iterative. First, for each case, we calculate a hospital-specific relative charge value by dividing the short-stay outlier adjusted charge per discharge (see step 3) of the case (after removing the statistical outliers (see step 1)) and cases with a length of stay of 7 days or less (see step 2) by the average charge per discharge for the LTCH in which the case occurred. The resulting ratio is then multiplied by the LTCH's case-mix index to produce an adjusted hospital-specific relative charge value for the case. An initial case-mix index value of 1.0 is used for each LTCH.

For each LTC–DRG, the LTC–DRG relative weight is calculated by dividing the average of the adjusted hospital-specific relative charge values (from above) for the LTC–DRG by the overall average hospital-specific relative charge value across all cases for all LTCHs. Using these recalculated LTC–DRG relative weights, each LTCH's average relative weight for all of its cases (case-mix) is calculated by dividing the sum of all the LTCH's LTC–DRG relative weights by its total number of cases. The LTCHs' hospital-specific relative charge values above are multiplied by these hospital specific case-mix indexes. These hospital-specific case-mix adjusted relative charge values are then used to calculate a new set of LTC–DRG relative weights across all LTCHs. In this final rule, this iterative process is continued until there is convergence between the weights produced at adjacent steps, for example, when the maximum difference is less than 0.0001.

Step 5—Adjust the LTC–DRG relative weights to account for nonmonotonically increasing relative weights.

As explained in section IX.D. of this preamble, the LTC–DRGs contain ''pairs'' that are differentiated based on the presence or absence of CCs. LTC–DRGs with CCs are defined by certain secondary diagnoses not related to or inherently a part of the disease process identified by the principal diagnosis, but the presence of additional diagnoses does not automatically generate a CC. The value of monotonically increasing relative weights rises as the resource use increases (for example, from uncomplicated to more complicated). The presence of CCs in a LTC–DRG means that cases classified into a ''without CC'' LTC–DRG are expected to have lower resource use (and lower costs). In other words, resource use (and costs) are expected to decrease across ''with CC''/''without CC'' pairs of LTC–DRGs. For a case to be assigned to a LTC–DRG with CCs, more coded information is called for (that is, at least one relevant secondary diagnosis), than for a case to be assigned to a LTC–DRG without CCs (which is based on only one principal diagnosis and no relevant secondary diagnoses). Currently, the database includes both accurately coded cases without complications and cases that have complications (and cost more) but were not coded completely. Both types of cases are grouped to a LTC–DRG ''without CCs'' since only one principal diagnosis was coded. Since LTCHs are currently paid under cost-based reimbursement, which is not based on patient diagnoses, LTCHs' coding for these cases may not have been as detailed as possible.

Thus, as we explained in the proposed rule, in developing the relative weights for the LTCH prospective payment system, we found on occasion that the data suggested that cases classified to the LTC–DRG ''with CCs'' of a ''with CC''/''without CC'' pair had a lower average charge than the corresponding LTC–DRG ''without CCs.'' We believe this anomaly may be due to coding that may not have fully reflected all comorbidities that were present. Specifically, LTCHs may have failed to code relevant secondary diagnoses, which resulted in cases that actually had CCs being classified into a ''without CC'' LTC–DRG. It is not appropriate to pay a lower amount for the ''with CC'' LTC–DRG. Therefore, in this final rule, we continue to group both the cases ''with CCs'' and ''without CCs'' together for the purpose of calculating the relative weights for the LTC–DRGs until we have adequate data to calculate appropriate separate weights for these anomalous LTC–DRG pairs. We expect that, as was the case when we first implemented the acute care hospital inpatient prospective payment system, this problem will be self-correcting, as LTCHs submit more completely coded data in the future.

For this final rule, using the LTCH cases in the March 2002 update of the FY 2001 MedPAR file, we identified three types of ''with CC'' and ''without CC'' pairs of LTC–DRGs that are nonmonotonic, that is, where the ''without CC'' LTC–DRG would have a higher average charge than the ''with CC'' LTC–DRG.

The first category of nonmonotonically increasing relative weights for LTC–DRG pairs ''with and without CCs'' contains 1 pair of LTC–DRGs in which both the LTC–DRG ''with CCs'' and the LTC–DRG ''without CCs'' had 25 or more LTCH cases and, therefore, did not fall into one of the 5 quintiles. For that pair of LTC–DRGs, we combine the cases and compute a new relative weight based on the case-weighted average of the combined cases of the LTC–DRGs. The case-weighted average charge is determined by dividing the total charges for all cases by the total number of cases for the combined LTC–DRG. This new relative weight is assigned to both of the LTC–DRGs in the pair. For the FY 2003 implementation of the LTCH prospective payment system in this final rule, LTC–DRGs 10 and 11 are in this category.

The second category of nonmonotonically increasing relative weights for LTC–DRG pairs with and without CCs consists of 1 pair of LTC–DRGs that has fewer than 25 cases and are both grouped to different quintiles in which the ''without CC'' LTC–DRG is in a higher-weighted quintile than the

''with CC'' LTC–DRG. For that pair, we combine the cases and determine the case-weighted average charge for all cases. The case-weighted average charge is determined by dividing the total charges for all cases by the total number of cases for the combined LTC–DRG. Based on the case-weighted average charge, we determined which quintile the ''combined LTC–DRG'' is grouped. Both LTC–DRGs in the pair are then grouped into the same quintile, and thus have the same relative weight. For the FY 2003 implementation of the LTCH prospective payment system in this final rule, LTC–DRGs 68 and 69 (low volume quintile 3) are in this category.

The third category of nonmonotonically increasing relative weights for LTC–DRG pairs with and without CCs consists of 2 pairs of LTC–DRGs where one of the LTC–DRGs has fewer than 25 LTCH cases and is grouped to a quintile and the other LTC–DRG has 25 or more LTCH cases and has its own LTC–DRG weight, and the LTC–DRG ''without CCs'' has the higher weight. We remove the low volume LTC–DRG from the quintile and combine it with the other LTC–DRG for the computation of a new relative weight for each of these LTC–DRGs. This new relative weight is assigned to both LTC–DRGs, so they each have the same relative weight. For the FY 2003 implementation of the LTCH prospective payment system, the following LTC–DRGs are in this category: LTC–DRGs 274 and 275, and LTC–DRGs 413 and 414.

In addition, for the FY 2003 implementation of the LTCH prospective payment system, we determine the relative weight for each LTC–DRG using charges reported in the March 2002 update of the FY 2001 MedPAR file. Of the 510 LTC–DRGs in the CMS LTCH prospective payment system, we identified 159 LTC–DRGs for which there were no LTCH cases in the database. That is, based on the FY 2001 MedPAR file used in this final rule, no patients who would have been classified to those DRGs were treated in LTCHs during FY 2001 and, therefore, no charge data were reported for those DRGs. Thus, in the process of determining the relative weights of LTC–DRGs, we were unable to determine weights for these 159 LTC–DRGs using the method described above. However, since patients with a number of the diagnoses under these LTC–DRGs may be treated at LTCHs beginning in FY 2003, when the LTCH prospective payment system is implemented, we are assigning relative weights to each of the 159 ''no volume'' LTC–DRGs based on clinical similarity and relative costliness to one of the remaining 351 (510 − 159 = 351) LTC–DRGs for which we are able to determine relative weights, based on FY 2001 charge data.

As there are currently no LTCH cases in these ''no volume'' LTC–DRGs, we establish relative weights for the 165 LTC–DRGs with no LTCH cases in the FY 2001 MedPAR file used in this final rule by grouping them to the appropriate low volume quintile. This methodology is consistent with our methodology used in determining relative weights to account for low volume LTC–DRGs described above.

As we described in the proposed rule, our methodology for determining relative weights for the ''no volume'' LTC–DRGs is as follows: First, we cross-walk the no volume LTC–DRGs by matching them to other similar LTC–DRGs for which there were LTCH cases in the FY 2001 MedPAR file based on clinical similarity and intensity of use of resources as determined by care provided during the period of time surrounding surgery, surgical approach (if applicable), length of time of surgical procedure, post-operative care, and length of stay. We assign the weight for the applicable quintile to the no volume LTC–DRG if the LTC–DRG to which it would be cross-walked was grouped to one of the low volume quintiles. If the LTC–DRG to which the no volume LTC–DRG would be cross-walked was not one of the LTC–DRGs grouped to one of the low volume quintiles, we compare the weight of the LTC–DRG to which the no volume LTC–DRG would be cross-walked to the weights of each of the five quintiles and assign the no volume LTC–DRG the relative weight of the quintile with the closest weight. For this final rule, a list of the no volume LTC–DRGs and the LTC–DRG to which it would be crosswalked in order to determine the appropriate low volume quintile for the assignment of a relative weight is shown below in Chart 3.

CHART 3.—NO VOLUME LTC–DRG CROSSWALK AND QUINTILE ASSIGNMENT [1]

LTC–DRG	Description	Cross-walked LTC–DRG	Low volume quintile assigned
3	CRANIOTOMY AGE 0–17	1	Quintile 5
6	CARPAL TUNNEL RELEASE	224	Quintile 1
26	SEIZURE & HEADACHE AGE 0–17	25	Quintile 1
30	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0–17	29	Quintile 3
32	CONCUSSION AGE >17 W/O CC	25	Quintile 1
33	CONCUSSION AGE 0–17	25	Quintile 1
36	RETINAL PROCEDURES	47	Quintile 1
37	ORBITAL PROCEDURES	47	Quintile 1
38	PRIMARY IRIS PROCEDURES	47	Quintile 1
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	47	Quintile 1
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	47	Quintile 1
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17	47	Quintile 1
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	47	Quintile 1
48	OTHER DISORDERS OF THE EYE AGE 0–17	47	Quintile 1
49	MAJOR HEAD & NECK PROCEDURES	63	Quintile 5
50	SIALOADENECTOMY	55	Quintile 2
51	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	55	Quintile 2
52	CLEFT LIP & PALATE REPAIR	55	Quintile 2
53	SINUS & MASTOID PROCEDURES AGE >17	55	Quintile 2
54	SINUS & MASTOID PROCEDURES AGE 0–17	55	Quintile 2
56	RHINOPLASTY	55	Quintile 2
57	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	55	Quintile 2
58	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17	55	Quintile 2
59	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	55	Quintile 2
60	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17	55	Quintile 2
62	MYRINGOTOMY W TUBE INSERTION AGE 0–17	55	Quintile 2
70	OTITIS MEDIA & URI AGE 0–17	67	Quintile 1
71	LARYNGOTRACHEITIS	67	Quintile 1
74	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17	67	Quintile 1
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17	67	Quintile 1
91	SIMPLE PNEUMONIA & PLEURISY AGE 0–17	90	Quintile 3
98	BRONCHITIS & ASTHMA AGE 0–17	97	Quintile 1
104	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W CARDIAC CATH	110	Quintile 5
105	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W/O CARDIAC CATH	110	Quintile 5
106	CORONARY BYPASS W PTCA	110	Quintile 5
107	CORONARY BYPASS W CARDIAC CATH	110	Quintile 5
109	CORONARY BYPASS W/O PTCA OR CARDIAC CATH	110	Quintile 5
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	118	Quintile 1
119	VEIN LIGATION & STRIPPING	131	Quintile 2
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0–17	136	Quintile 2
147	RECTAL RESECTION W/O CC	146	Quintile 4
151	PERITONEAL ADHESIOLYSIS W/O CC	150	Quintile 1
153	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	171	Quintile 3
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	171	Quintile 3
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0–17	171	Quintile 3
158	ANAL & STOMAL PROCEDURES W/O CC	157	Quintile 1
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	178	Quintile 2
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	178	Quintile 2
162	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	178	Quintile 2
163	HERNIA PROCEDURES AGE 0–17	178	Quintile 2
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	171	Quintile 3
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	171	Quintile 3
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	178	Quintile 2
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	178	Quintile 2
169	MOUTH PROCEDURES W/O CC	178	Quintile 2
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0–17	183	Quintile 2
186	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0–17	185	Quintile 3
187	DENTAL EXTRACTIONS & RESTORATIONS	185	Quintile 3
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17	189	Quintile 2
192	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	193	Quintile 4
194	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC	199	Quintile 3
195	CHOLECYSTECTOMY W C.D.E. W CC	199	Quintile 3
196	CHOLECYSTECTOMY W C.D.E. W/O CC	199	Quintile 3
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	218	Quintile 3
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0–17	218	Quintile 3
219	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC	218	Quintile 3
220	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0–17	218	Quintile 3
228	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC	229	Quintile 2
232	ARTHROSCOPY	234	Quintile 1
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0–17	234	Quintile 1

CHART 3.—NO VOLUME LTC–DRG CROSSWALK AND QUINTILE ASSIGNMENT [1]—Continued

LTC–DRG	Description	Cross-walked LTC–DRG	Low volume quintile assigned
255	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0–17	234	Quintile 1
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	257	Quintile 2
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	257	Quintile 2
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	257	Quintile 2
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	262	Quintile 1
267	PERIANAL & PILONIDAL PROCEDURES	157	Quintile 1
279	CELLULITIS AGE 0–17	278	Quintile 2
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0–17	281	Quintile 2
286	ADRENAL & PITUITARY PROCEDURES	292	Quintile 4
289	PARATHYROID PROCEDURES	290	Quintile 1
291	THYROGLOSSAL PROCEDURES	290	Quintile 1
293	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	149	Quintile 2
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17	297	Quintile 2
309	MINOR BLADDER PROCEDURES W/O CC	311	Quintile 1
313	URETHRAL PROCEDURES, AGE >17 W/O CC	311	Quintile 1
314	URETHRAL PROCEDURES, AGE 0–17	311	Quintile 1
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0–17	326	Quintile 2
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0–17	329	Quintile 1
328	URETHRAL STRICTURE AGE >17 W CC	324	Quintile 2
330	URETHRAL STRICTURE AGE 0–17	329	Quintile 1
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0–17	329	Quintile 1
334	MAJOR MALE PELVIC PROCEDURES W CC	344	Quintile 4
335	MAJOR MALE PELVIC PROCEDURES W/O CC	336	Quintile 3
337	TRANSURETHRAL PROSTATECTOMY W/O CC	341	Quintile 2
338	TESTES PROCEDURES, FOR MALIGNANCY	341	Quintile 2
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0–17	339	Quintile 1
343	CIRCUMCISION AGE 0–17	329	Quintile 1
349	BENIGN PROSTATIC HYPERTROPHY W/O CC	348	Quintile 1
351	STERILIZATION, MALE	348	Quintile 1
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	358	Quintile 5
354	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC	344	Quintile 4
355	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	344	Quintile 4
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	344	Quintile 4
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	344	Quintile 4
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	149	Quintile 2
362	ENDOSCOPIC TUBAL INTERRUPTION	149	Quintile 2
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	367	Quintile 3
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY	369	Quintile 2
370	CESAREAN SECTION W CC	352	Quintile 3
371	CESAREAN SECTION W/O CC	369	Quintile 2
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	369	Quintile 2
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	359	Quintile 1
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C	359	Quintile 1
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	359	Quintile 1
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	359	Quintile 1
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	359	Quintile 1
378	ECTOPIC PREGNANCY	369	Quintile 2
379	THREATENED ABORTION	359	Quintile 1
380	ABORTION W/O D&C	359	Quintile 1
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	359	Quintile 1
382	FALSE LABOR	359	Quintile 1
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	359	Quintile 1
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	359	Quintile 1
385	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	360	Quintile 1
386	EXTREME IMMATURITY	369	Quintile 2
387	PREMATURITY W MAJOR PROBLEMS	369	Quintile 2
388	PREMATURITY W/O MAJOR PROBLEMS	360	Quintile 1
390	NEONATE W OTHER SIGNIFICANT PROBLEMS	369	Quintile 2
391	NORMAL NEWBORN	360	Quintile 1
392	SPLENECTOMY AGE >17	177	Quintile 3
393	SPLENECTOMY AGE 0–17	149	Quintile 2
396	RED BLOOD CELL DISORDERS AGE 0–17	399	Quintile 1
402	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	400	Quintile 3
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0–17	347	Quintile 2
407	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	400	Quintile 3
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY	410	Quintile 1
412	HISTORY OF MALIGNANCY W ENDOSCOPY	410	Quintile 1
417	SEPTICEMIA AGE 0–17	416	Quintile 3
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17	420	Quintile 1
441	HAND PROCEDURES FOR INJURIES	229	Quintile 2

CHART 3.—NO VOLUME LTC–DRG CROSSWALK AND QUINTILE ASSIGNMENT [1]—Continued

LTC–DRG	Description	Cross-walked LTC–DRG	Low volume quintile assigned
446	TRAUMATIC INJURY AGE 0–17	445	Quintile 3
448	ALLERGIC REACTIONS AGE 0–17	455	Quintile 1
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0–17	455	Quintile 1
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	209	Quintile 5
481	BONE MARROW TRANSPLANT	394	Quintile 5
482	TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES	55	Quintile 2
484	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	2	Quintile 5
485	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TR	209	Quintile 5
491	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY	209	Quintile 5
496	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	233	Quintile 4
500	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC	498	Quintile 3
502	KNEE PROCEDURES W PDX OF INFECTION W/O CC	498	Quintile 3
504	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT	506	Quintile 5
507	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA	508	Quintile 3
514	CARDIAC DEFIBRILATOR IMPLANT W CARDIAC CATH	116	Quintile 3
516	PERCUTANEOUS CARDIVASCULAR PROCEDURE W AMI	116	Quintile 3
525	HEART ASSIST SYSTEM IMPLANT	111	Quintile 5
526	PERCUTANEOUS CARVIOVASCULAR PROC W DRUG-ELUTING STENT W AMI	116	Quintile 3
527	PERCUTANEOUS CARVIOVASCULAR PROC W DRUG-ELUTING STENT W/O AMI	116	Quintile 3

[1] This chart does not reflect the six transplant LTC–DRGs (103, 302, 480, 495, 512, and 513) or the two ''error'' LTC–DRGs (469 and 470), for which we assign a relative weight of 0.0000.

To illustrate the methodology for determining relative weights for the 159 LTC–DRGs with no LTCH cases, we provide the following examples, which refer to the no volume LTC–DRGs crosswalk information provided above in Chart 3:

Example 1: There were no cases in the FY 2001 MedPAR file used for this final rule for LTC–DRG 3 (Craniotomy Age 0–17). Since the period of time surrounding the surgery and the post-operative care are similar in resource use and the length and complexity of the surgical procedures and the length of stay are similar, we determined that LTC–DRG 1 (Craniotomy Age > 17 Except for Trauma), which is assigned to low volume quintile 5 for the purpose of determining the relative weights, displayed similar clinical and resource use. Therefore, we assign the same relative weight of LTC–DRG 1 of 1.8783 (quintile 5) (Table 3 in the Addendum to this final rule) to LTC–DRG 3.

Example 2: There were no LTCH cases in the FY 2001 MedPAR file used in this final rule for LTC–DRG 91 (Simple Pneumonia and Pleurisy Age 0–17). Since the severity of illness in patients with bronchitis and asthma are similar in patients regardless of age, we determined that LTC–DRG 90 (Simple Pneumonia and Pleurisy Age >17 without CC) displayed similar clinical and resource use characteristics and have a similar length of stay to LTC–DRG 91. There were over 25 cases in LTC–DRG 90. Therefore, it is not assigned to a low volume quintile for the purpose of determining the relative weights. However, under our methodology, LTC–DRG 91, with no LTCH cases, needs to be grouped to a low volume quintile. We identified that the quintile with the closest weight to LTC–DRG 90 (0.7921; see Table 3 in the Addendum to this final rule) was low volume quintile 3 (0.8284; see Table 3 in the Addendum to this final rule). Therefore, we assign LTC–DRG 91 a relative weight of 0.08284.

Furthermore, we establish LTC–DRG relative weights of 0.0000 for heart, kidney, liver, lung, pancreas, and simultaneous pancreas/kidney transplants (LTC–DRGs 103, 302, 480, 495, 512 and 513, respectively) because Medicare will only cover these procedures if they are performed at a hospital that has been certified for the specific procedures by Medicare. We only include these six transplant LTC–DRGs in the GROUPER program for administrative purposes. Since we use the same GROUPER program for LTCHs as is used under the acute care hospital inpatient prospective payment system, removing these DRGs would be administratively burdensome. Based on our research, we found that most LTCHs only perform minor surgeries, such as minor small and large bowel procedures, to the extent any surgeries are performed at all. Given the extensive criteria that must be met to become certified as a transplant center for Medicare, we believe it is unlikely that any LTCHs would become certified as a transplant center. In fact, in the nearly 20 years since the implementation of the acute care hospital inpatient prospective payment system, there has never been a LTCH that even expressed an interest in becoming a transplant center.

Again, we note that as this system is dynamic, it is entirely possible that the number of LTC–DRGs with a zero volume of LTCH cases based on the system will vary in the future. We used the best most recent available claims data in the MedPAR file to identify zero volume LTC–DRGs and to determine the relative weights in this final rule.

Table 3 in the Addendum to this final rule lists the LTC–DRGs and their respective relative weights and arithmetic mean length of stay.

B. Special Cases: General

Under section 123 of Public Law 106–113, the Secretary generally has broad authority in developing the prospective payment system for LTCHs. The statute also provides the Secretary with broad authority in determining whether (and how) to make adjustments to LTCH prospective payment system payments. Section 307 of Public Law 106–554 directs the Secretary to ''examine'' appropriate adjustments to the LTCH prospective payment system, including certain specific adjustments, but the Secretary continues to have discretion as to whether to provide for adjustments to reflect variations in the necessary costs of treatment among LTCHs.

Generally, LTCHs, as described in section 1886(d)(1)(B)(iv) of the Act, are distinguished from other inpatient hospital settings by maintaining an average length of stay greater than 25 days. However, LTCHs also have certain ''special'' cases that have stays of considerably less than the average length of stay and that receive significantly less than the full course of treatment for a specific LTC–DRG. Such cases would be paid inappropriately if the hospital were to receive the full LTC–DRG payment. Further, because of the budget neutrality requirement of section 123(a)(1) of Public Law 106–113, ''overpayment'' for these ''special'' cases would reduce payments for all other cases that warrant full payment based on the LTCH services delivered. We discuss the special cases below in terms of definitions, policy rationale, and payment methodology.

In the proposed rule, we proposed three subsets of special cases: very short-stay discharges, short-stay outlier discharges, and interrupted stays. In this final rule, in response to comments, we are not adopting our policy concerning very short-stay discharges, and are instead extending a revised short-stay outlier policy to include stays of 1 to 7 days, as explained in the comments and responses regarding short-stay outliers in section X.C. of this preamble. However, we have specifically addressed the comments regarding very short-stay discharges in section X.D. of this preamble. Also, in response to comments, we are simplifying our interrupted stay policy to incorporate a methodology that relies on a fixed number of days to determine payment for readmission from acute care hospitals or IRFs, as explained in section X.E. of this preamble.

C. Special Cases: Short-Stay Outliers

In the March 22, 2002 proposed rule, we proposed to apply a special payment policy to short-stay cases with a length of stay between 8 and two-thirds the average length of stay for each LTC–DRG. We based the proposed policy on the belief that many of these patients could have been treated more appropriately in an acute hospital subject to the acute care hospital inpatient prospective payment system. Therefore, we proposed to implement a short-stay outlier policy for cases with a length of stay beyond 7 days, but not more than two-thirds the average length of stay for the DRG.

A short-stay outlier case may occur when a beneficiary receives less than the full course of treatment at the LTCH before being discharged. These patients may be discharged to another site of care or they may be discharged and not readmitted because they no longer require treatment. Furthermore, patients may expire early in their LTCH stay.

As noted above, generally LTCHs are defined by statute as having an average length of stay of greater than 25 days. We believe that a payment adjustment for short-stay outlier cases results in more appropriate payments, since these cases most likely would not receive a full course of treatment in such a short period of time and a full LTC–DRG payment may not always be appropriate. Payment-to-cost ratios simulated for LTCHs, for the cases described above, show that if LTCHs receive a full LTC–DRG payment for those cases, they would be significantly ''overpaid'' for the resources they have actually expended.

We also believe that providing a reduced payment for short-stay outlier cases neither encourages hospitals to admit patients for whom they knowingly are unable to provide complete treatment in order to maximize payment, nor severely penalizes providers that, in good faith, admit a patient and provide some services before realizing that the beneficiary would receive more appropriate treatment at another site of care. As explained in the proposed rule, establishing a short-stay outlier payment for these types of cases addresses the incentives inherent in a discharge-based prospective payment system for LTCHs for treating patients with a short length of stay. One of the primary objectives of a prospective payment system is to provide incentives for hospitals to become more efficient and, in doing so, to ensure that they can still receive adequate and appropriate payments. Because the LTCH prospective payment system rates are set to be budget neutral, providing a full prospective payment system payment for those cases that do not actually require the full course of treatment would reduce payments for cases that warrant full payment based on the LTCH services furnished. Therefore, we continue to believe that a short-stay outlier policy permits more equitable payment.

In considering possible short-stay outlier policies, we sought to balance appropriate payments to shorter stay cases, which are generally less expensive than the average case in each LTC–DRG, and payments to the more expensive inlier cases (as defined in section X.A.2. of this preamble) in each LTC–DRG. In the absence of a short-stay outlier policy, based on analysis of payment-to-cost ratios, the full LTC–DRG payment would ''overpay'' the short-stay cases and ''underpay'' the inlier cases. We estimated that a short-stay outlier policy that results in payment-to-cost ratios that are at (or close to) 1.0 would ensure appropriate payments to both short-stay and inlier cases within a LTC–DRG because, on average, payments closely match costs for these cases under this prospective payment system.

With no short-stay outlier policy, we estimated that payment-to-cost ratios would be greater than 2.0 for cases with lengths of stay below the average length of stay for the LTC–DRG. In the proposed rule, we considered determining adjustments to the per discharge payment using the following three alternative short-stay outlier threshold policies:

- The least of 100 percent of the cost of the case, 100 percent of the LTC–DRG specific per diem amount multiplied by the length of stay, or the full LTC–DRG payment for cases with a length of stay between 8 days and the average length of stay of the LTC–DRG;
- The least of 150 percent of the cost of the case, 150 percent of the LTC–DRG specific per diem amount multiplied by the length of stay, or the full LTC–DRG payment for cases with a length of stay between 8 days and two-thirds of the average length of stay of the LTC–DRG; or
- The least of 200 percent of the cost of the case, 200 percent of the LTC–DRG specific per diem amount multiplied by the length of stay, or the full LTC–DRG payment for cases with a length of stay between 8 days and half of the average length of stay of the LTC–DRG.

In each of the three alternatives examined, the short-stay outlier day threshold corresponds to the day where the full LTC–DRG payment would be reached by paying the specified percentage of the per diem amount for the LTC–DRG. This would result in a gradual increase in payment as the length of stay increases without producing a ''payment cliff,'' which will provide an incentive to discharge a patient one day later because there will be a significant increase in the payment.

Our analysis in the proposed rule showed that of these three options, in conjunction with the proposed very short-stay discharge policy, the most appropriate policy for short-stay outliers was to adjust the per discharge payment by paying the least of 150 percent of cost, 150 percent of the LTC–DRG per diem amount, or the full LTC–DRG payment. The analysis showed that payment-to-cost ratios for both cases that would be identified as short-stay outliers and inlier cases (that are below the high-cost outlier threshold) will be at or slightly above 1.0. We believed that this alternative would most appropriately pay cases identified as short-stay outliers, inlier cases, and longer stay cases without an incentive to provide inefficient care.

Payment simulations that we conducted for the proposed rule showed that, of the LTCH cases in the FY 2000 MedPAR file with a length of stay between 8 days and two-thirds of the average length of stay of the LTC–DRG under the system, payment to 60.8 percent of those cases would be capped at 150 percent of cost. Therefore, we proposed to define a short-stay outlier as a case that had a length of stay between 8 days and two-thirds of the arithmetic average length of stay for each LTC–DRG (proposed § 412.529). We also proposed to adjust the per discharge payment by paying a short-stay outlier case (defined in proposed § 412.529(a)) the least of: (1) 150 percent of the LTC–DRG specific per diem amount multiplied by the length of stay; (2) 150 percent of the cost of the case; or (3) the full LTC–DRG payment (proposed § 412.529(c)(1)).

We proposed to determine the LTC–DRG specific per diem based payment using the standard Federal payment rate (Federal payment rate × LTC–DRG weight) and the arithmetic mean length of stay of the specific LTC–DRG (proposed § 412.529(c)(2)). We proposed that the cost of a case would be determined using the hospital-specific cost-to-charge ratio and the Medicare allowable charges for the case (proposed § 412.529(c)(3)).

Comment: Several commenters supported the proposed short-stay outlier policy. However, they recommended that this policy also be used as the basis for payment for cases in which the LTCH stay is 7 days or less in lieu of our proposed very short-stay discharge policy.

Response: We appreciate the commenters' support for the short-stay outlier policy and the suggestion to apply it to stays of 7 days or less, which, in the proposed rule, fell under the very short-stay discharge policy. Accounting for stays significantly under the average length of stay in a LTCH is an important feature of a LTCH prospective payment system.

In response to the commenters' recommendation, we reconsidered the policies for both the very short-stay discharge and the short-stay outlier. Policy considerations underlying the short-stay outlier and the proposed very short-stay discharge categories were similar. Patient stays that fell under either category were not likely to have received a full course of treatment and, therefore, for these cases, LTCHs should not receive payment based on the provision of a full course of treatment. Based on the similar policy underpinnings of each policy and our awareness of the payment ''cliff'' effect between stays with a length of stay of 7 days and a length of stay of 8 days, we revisited our data. As a result of our reevaluation, we have determined that we can still meet the goals of our policy considerations by eliminating the very short-stay discharge policy and extending a modified version of the short-stay outlier policy to days 1 through 7 in the LTCH length of stay.

In order to accommodate the addition of cases with a length of stay of 7 days or less to the short-stay outlier payment category, we analyzed numerous data simulations to determine how to reasonably adjust the proposed payment

percentage formula, for example, the lesser of 150 percent of cost or 150 percent of the LTC–DRG specific per diem amount multiplied by the length of stay. If we were to simply maintain the proposed methodology for short-stay outliers and apply it to discharges with a length of stay between 1 and 7 days, we found that we would be ''overpaying'' significantly for those stays and ''underpaying'' for stays categorized as inliers. We considered adjusting the percentage to 130 or 125 percent; however, we found these percentages did not result in payments with an appropriate disincentive for admitting patients who are likely to stay at the LTCH for 7 days or less. After additional simulations, we determined that the most appropriate percentage that maintains a payment-to-cost ratio of approximately 1 for 7 days or less is 120 percent. We determined that if we adjust the payment percentage from 150 to 120 percent, we also need to adjust the upper day threshold from two-thirds of the average length of stay for the LTC–DRG to five-sixths of the geometric average length of stay for the LTC–DRG. As discussed in detail later in this section, we found that five-sixths of the geometric (versus the arithmetic) average length of stay would be the short-stay outlier threshold where the full LTC–DRG payment would be made at 120 percent. That is, by adjusting the per discharge payment by paying at 120 percent of the per diem DRG payment, once a stay reaches five-sixths of the geometric average length of stay for the LTC–DRG, the full DRG payment will have been made. This results in a gradual increase in payment as the length of stay increases. If we retained the original two-thirds of the average length of stay for the LTC–DRG criteria, it would have produced a payment ''cliff'' that would have provided an incentive to extend a patient's stay for one or more days beyond the ''two-thirds average day'' in order to receive a significant increase in payment.

As a result of this analysis, in this final rule, we are revising the short-stay outlier policy to adjust the per discharge payment by paying the least of 120 percent of the cost of the case, 120 percent of the LTC–DRG specific per diem amount multiplied by the length of stay of that discharge, or the full LTC–DRG payment, for all cases with a length of stay up to and including five-sixths of the geometric average length of stay of the LTC–DRG.

As a consequence of our elimination of the very short-stay discharge policy, the reduction to the percentage from 150 to 120 percent, and the extension of the upper day threshold from two-thirds of the arithmetic average length of stay to five-sixths of the geometric average length of stay, the standard Federal base rate increased from $27,649 in the proposed rule to $34,956 in this final rule. The reduction in the percentage to 120 percent does not necessarily correlate to a reduction in payment under the revised short-stay outlier policy since the 120 percent is applied to a higher LTC–DRG payment. Furthermore, because we are ultimately constrained by maintaining budget neutrality, a change in one policy may require corresponding changes to other policies. However, these changes are not necessarily substantial, and, as a result, the overall effects of our changes in this final rule may be minimal. For example, when we consider how the elimination of the very short-stay discharge policy actually impacts payment under the LTCH prospective payment system for LTC–DRGs 271 and 461, the actual adjusted payment for these DRGs did not change significantly between the proposed rule and the final rule.

Rule	Base rate (BR)	DRG	Description	Relative weight (RW)	Average length of stay (ALOS)	Full DRG payment (BR*RW)	Per diem (full DRG pay/AlOS)	Payment per day at appropriate percentage
Proposed (150%) ..	$27,649	271	Skin Ulcers	1.2354	39.1	$34,158	$873	$1,310
Final (120%)	34,956	271	Skin Ulcers	0.9714	31.1	33,956	1,092	1,310
Proposed (150%) ..	$27,649	416	Septicemia Age >17	1.1222	29.4	$31,028	$1,055	$1,583
Final (120%)	34,956	416	Septicemia Age >17	0.9612	25.9	33,600	1,297	1,557

Thus, despite the reduction of the percentage from 150 to 120 percent, it is evident that the actual payment differences between the two policies are remarkably minimal.

To summarize, the results of the changes in this final rule to the short-stay outlier policy are as follows: (1) The percentage that is applied to determine payment under the short-stay outlier policy is changed from 150 percent to 120 percent; (2) the number of discharges paid as short-stay outliers will increase, due to the inclusion of cases that would formerly have been paid as very short-stay discharges; (3) the upper day threshold for short-stay outliers is extended from two-thirds of the arithmetic average length of stay for a LTC–DRG to five-sixths of the geometric average length of stay for the LTC–DRG; (4) the cases that fell under the very short-stay discharge policy in the proposed rule will now be paid at a higher rate under the revised short-stay outlier policy; (5) the standard Federal base rate will increase, resulting in higher overall payments being made to inliers and a higher base amount upon which short-stay outlier payments are determined; and (6) the fixed-loss amount for high-cost outliers will decrease (see section X.J.6. of this preamble for information on high-cost outliers).

Comment: A number of commenters considered our proposal to pay the least of three payment amounts for short-stay outliers to be too burdensome. They indicated a preference to a one-payment methodology, regardless of the number of days of a patient's stay. Some commenters recommended elimination of the payment related to a percentage of cost because they believed this method creates the wrong incentive and does not reward efficiency. The commenters added that the definition of ''cost'' under the short-stay outlier payment provision is confusing because it is not clear whether the ''hospital-specific cost-to-charge ratio'' used in the proposed rule applies to the current year, the prior year, or some other period.

Response: We do not agree with the commenters that the calculation of the short-stay outlier payment is a burden on the LTCH. The Medicare payment for short-stay outliers using the least of the three payment amounts is determined by the fiscal intermediary with the PRICER software developed specifically for the LTCH prospective payment system. The LTCH is not required to calculate which of the payment options is appropriate for each individual discharge. Rather, the intermediary is responsible for this calculation.

We also do not agree with the commenters that a LTCH's payment should be based on a one-payment

methodology, regardless of the patient's length of stay. As we have stated above, a single payment that does not account for shorter lengths of stay would ''overpay'' the short-stay cases and ''underpay'' the inlier cases. Furthermore, since under this final rule, Medicare will adjust the per discharge payment by paying the least of 120 percent of the cost of the case, 120 percent of the LTC–DRG specific per diem amount multiplied by the length of stay of that discharge, or the full LTC–DRG payment for cases with a length of stay up to and including five-sixths of the geometric average length of stay of the LTC–DRG, we do not believe a lesser payment based on 120 percent of the cost of the case creates the wrong incentives. Finally, the costs used to determine Medicare payment under the short-stay outlier policy are taken from the cost-to-charge ratio appearing on the most recent cost report as submitted by the LTCH to the fiscal intermediary.

Comment: One commenter indicated that the payment amount for short-stay outliers is too high and provides for reimbursement that exceeds costs by 50 percent.

Response: The commenter is incorrect in stating that, under the proposed rule, payment for short-stay outliers would exceed costs by 50 percent. Under the proposed rule, LTCHs would not have necessarily been provided with a payment that exceeded costs by 50 percent, since the proposed short-stay policy would have paid the least of 150 percent of the cost of the case, 150 percent of the LTC–DRG specific per diem amount multiplied by the length of stay of that discharge, or the full LTC–DRG payment. Depending on the stay, any one of the three payment categories could have applied, two of which were not related to costs. In addition, the short-stay outlier policy to which the commenters are referring has been changed in the final rule, as explained above. Under the revised short-stay outlier methodology in this final rule, the percentage upon which short-stay outlier payment is based is no longer 150 percent, but is now 120 percent. We prepared extensive payment simulations in order to develop an equitable short-stay payment policy for implementation in the prospective payment system described in this final rule. In reconsidering the policy, we factored in the elimination of the very short-stay discharge policy and the inclusion of days 1 through 7 into the short-stay outlier policy. We determined that the least of 120 percent of the cost of the case, 120 percent of the LTC–DRG specific per diem amount multiplied by the length of stay, or the full LTC–DRG payment for cases with a length of stay up to and including five-sixths of the geometric average length of stay of the LTC–DRG would be a reasonable payment for short-stay outlier cases. At this percentage, we found that there were still payment-to-cost ratios that provided a disincentive for admission of patients that were likely to stay 7 days or less. We also determined that at 120 percent, stays falling under the short-stay outlier category would not be ''overpaid'' and a larger amount of total payments would be made for the care of true inlier patients.

Comment: Several commenters indicated that the short-stay and very short-stay outlier payment amounts are too low. They recommended that, since short-stay cases have medical therapies and treatment provided on the day of admission, short-stay outliers should be grouped into the appropriate LTC–DRG and paid at 200 percent of the specific LTC–DRG per diem for the first day of admission and 100 percent of the per diem for each day of stay thereafter. Other commenters recommended a 150-percent per diem for the first day and a 100-percent per diem for each day afterward, based on the specific LTC–DRG. Both groups of commenters believe that a policy of an increased payment for the first day of the stay is consistent with our policy on payment for transfers under the acute care hospital inpatient prospective payment system.

Response: As noted above, in response to public comments, we have revised the proposed very short-stay discharge policy. Under the revised short-stay policy, all short-stays, even those with a length of stay between 1 and 7 days, will be grouped into their specific LTC–DRGs. In response to the suggestion that we should provide for an increased payment for the first day of the stay consistent with payments under the acute care hospital inpatient prospective payment system, we call the commenters' attention to the distinctions between the treatment and care of patients at acute care hospitals and the treatment and care at LTCHs. For acute care hospitals, existing regulations at § 412.4(f) establish a payment rate of twice the per diem amount for the first day of the stay at the acute care hospital for the 10 DRGs included in the special transfer rule and payment at the per diem amount for each subsequent day, up to the full DRG payment. This policy presumes that the patient has been admitted as an inpatient to the acute care hospital with an acute medical condition. Even if the patient did not receive a full course of treatment at the acute care hospital and was subsequently transferred to a LTCH or another excluded hospital, SNF, or HHA, the immediate diagnostic care and patient stabilization required during that first day is resource-intensive and costly.

There are several reasons why we do not believe it is appropriate to adopt this policy for short-stays under the LTCH prospective payment system. First, according to research done by Urban, as well as anecdotal reports contained in many of the comments we received, a significant majority of LTCH patients are admitted from an acute care hospital, their medical conditions having been diagnosed and treated and their conditions stabilized to the extent that they can be discharged for additional hospital-level care at a LTCH. In this common situation, we do not believe that the costs incurred on that first day would reasonably exceed by 100 percent, or even by 50 percent, the costs of each subsequent day of hospitalization.

Second, the calculations that determined the daily payments under the short-stay policy were derived from the DRG-specific payment rate that is based on the average length of stay for each LTC–DRG. This means that when the patient is appropriately hospitalized in a LTCH over the course of the stay, any higher costs incurred in the first days of the stay were already accounted for in calculating the LTC–DRG relative weight. Finally, we reiterate that we are not finalizing the proposed very short-stay discharge policy and are instead extending the revised short-stay outlier policy to stays of 7 days or less. We believe that the short-stay outlier policy that we have promulgated in this final rule strikes an appropriate balance between not encouraging the inappropriate admission of short-stay patients to LTCHs while providing reasonable and equitable payments for Medicare patients who may have been admitted in good faith, but whose stays fall in a range below the average length of stay for a LTCH.

Comment: Several commenters believed that the short-stay outlier upper day threshold is too high and pointed to evidence that suggests that under the proposed LTCH prospective payment system, nearly half of all LTCH cases would be reimbursed on a per diem rather than on a discharge basis as required under the law. They believed that having a large number of cases reimbursed on a per diem basis discourages the efficiency of a discharge-based prospective payment system.

The commenters recommended the use of an upper day threshold of one-half the arithmetic average length of stay. They believed this upper day threshold would reduce the high industry-wide portion of cases that would be paid on a per diem basis.

In addition, one commenter noted that the very short-stay discharges were removed from the calculation of the average length of stay for each LTC–DRG, thereby inflating each mean. In effect, the commenter indicated that cases with shorter lengths of stay (1 through 7 days) are not included in calculating the average length of stay; and as a result, the average length of stay for each LTC–DRG is higher. This commenter believed that the application of the threshold of two-thirds to an ''inflated'' average length of stay would penalize LTCHs twice for short-stay outlier patients.

Response: The LTCH prospective payment system in this final rule was designed predominantly to encourage efficiency in LTCHs treating patients requiring long-term hospital-level care. This system functions on a per discharge basis that complies with statutory requirements, and provides for adjustments for concerns specific to LTCHs. In fact, the LTCH prospective payment system is structured so that greater overall dollars are spent on cases that approximate the 25-day average stay of a LTCH patient, which encourages LTCHs to admit and efficiently treat patients who specifically need long-term care. Using the upper day threshold of one-half, as the commenter suggested, may indeed reduce the number of cases paid under the adjusted per discharge short-stay outlier policy. However, for the reasons given in this response, the commenter's suggestion does not comport with the overall goals of the LTCH prospective payment system; and we are not adopting it.

Although the regression analyses and simulations based on prior years' TEFRA data may seem to indicate that nearly half of LTCH cases will be paid on an adjusted per discharge amount, we believe this data analysis does not necessarily predict the future behavior of LTCHs operating under a prospective payment system. The data used in the analysis are a product or reflection of the practice patterns of hospitals that operate under the mechanisms of the TEFRA payment system, which are different from the principles of a prospective payment system. However, these are the best data available upon which we can simulate LTCH behavior under the new LTCH prospective payment system. We believe that once the LTCH prospective payment system is implemented, the practice patterns of LTCHs will change. We anticipate that hospitals will alter their admission, treatment, and discharge patterns. Thus, we fully expect that an increasing majority of cases will be reimbursed on an unadjusted per discharge basis during the transition from reasonable cost-based reimbursement to prospective payments. The transition period of 5 years, designed to allow LTCHs to gradually adapt to the LTCH prospective payment system, should give LTCHs the opportunity to alter admission, discharge, treatment, and transfer patterns as needed for maximum clinical, as well as administrative, efficiency.

Based on our experience in implementing other Medicare prospective payment systems, we fully expect that as new data are received, we may revisit policy decisions described in this final rule. Furthermore, our Office of Research, Development, and Information will be tracking the impact of the prospective payments on LTCHs, other hospitals that treat long-term care patients, and other postacute care providers, which will enable us to determine whether additional policy changes are warranted.

As explained previously, the short-stay outlier upper day threshold corresponds to the day where the full LTC–DRG payment would be reached by paying the specified percentage of the per diem amount for the LTC–DRG. This threshold was chosen to create a gradual increase in payment as the length of stay increases without producing a payment ''cliff''. In the proposed rule, short-stay outlier payments were limited by 150 percent of the per diem amount for the LTC–DRG. Accordingly, the upper day threshold was also established at two-thirds to assure that the full DRG payment would be paid should the patient's stay equal two-thirds of the arithmetic average length of stay of the LTC–DRG.

Because we revised the proposed short-stay outlier policy for this final rule to also apply to discharges that had been proposed to be paid as very short-stay discharges, as requested by the commenters, we also reviewed the methodology for calculating the average length of stay for each LTC–DRG to determine the percentage of discharges that will be treated as short-stay outliers. Although we had originally used the arithmetic mean (which is the most commonly used measure of central tendency) for this calculation in the proposed rule, we now believe that there are certain statistical advantages, such as increased mathematical stability and accuracy, in using the geometric mean for determining the average length of stay for each LTC–DRG in the revised short-stay outlier policy. Lengths of stays within a DRG are log-normally distributed. This is because each individual length of stay may or may not be extremely long, but it cannot be less than zero. A log-normal distribution, by definition, is normal when converted to logarithms. After further simulations and research, we have found that the geometric mean is statistically more accurate in locating the center of the distribution of length of stays within a DRG, which is the result we desire. In addition, geometric weights are not likely to be influenced by a few very long-stay cases and, therefore, are more stable over time. Accordingly, we are revising our calculation for determining length of stay for short-stay outliers to account for the geometric mean. In the acute care hospital inpatient prospective payment system postacute transfer policy (§ 412.4(f)), the geometric mean length of stay for each DRG is used to determine per diem payments. For the reasons outlined above, we believe that it is desirable to adopt a methodology in the final rule consistent with that used in the acute care hospital inpatient prospective payment system.

In this final rule, we have set the per discharge adjustment for each LTC–DRG at 120 percent of the adjusted per diem amount for each LTC–DRG for the short-stay outlier policy. The corresponding upper day threshold that must be established to assure that the full DRG payment is made by the last day of the short-stay outlier payment is five-sixths of the geometric average length of stay of the LTC–DRG. We are aware that this upper day threshold may initially create a situation where there are a higher number of cases that are paid on an adjusted per discharge-basis. However, we expect significant changes in the types of patients admitted to LTCHs, as LTCHs adjust to the prospective payment system, which will reduce the number of patients in LTCHs that are paid as short-stay outliers.

We disagree that our method of calculating the average length of stay for the short-stay outlier policy would penalize LTCHs twice. As the commenter indicated, we do not include days 1 through 7 in the calculation of the average length of stay for each LTC–DRG. Even though we are now incorporating days 1 through 7 into the short-stay outlier payment category, our simulations have indicated that by including these extremely short stays in our mean calculations, the average

length of stay for each LTC–DRG would be inappropriately reduced and would then significantly bias payments against inlier cases. If stays of 7 days or less were included in the calculations of the average length of stay for each LTC–DRG, then the mean of each LTC–DRG would decrease and stays of shorter days would qualify for a full LTC–DRG payment. As the system must be budget neutral, this leads to a situation where more total dollars of payment would be shifted to shorter stays and, therefore, longer stays would receive less payment. We do not believe that it is appropriate to decrease payment to longer stays that actually receive a more representative and complete course of care in order to increase payments to shorter stays. Therefore, in this final rule, we continue to exclude stays of 7 days or less from our calculations of the average length of stay for each DRG, as was provided for in the proposed rule.

In addition, in the proposed rule, cases of 7 days or less were assigned to two specific DRGs in the proposed rule, and their costs were factored into those DRG weights. Although cases that we proposed to be assigned as very short-stay discharges are paid in this final rule under the category of short-stay outliers, we continue to believe that cases with stays of up to 7 days should not be included in the calculation of relative weights. This is because DRG relative weights should reflect the average of resources used on representative cases of a specific type. Stays of 7 days or less do not receive or benefit from treatment that is typical in a LTCH stay. Full resources are not used in the earlier stages of admission to a LTCH. If we did include stays of 7 days or less in the computation of the relative weights, the value of most weights would decrease and, therefore, inlier payments would decrease. We do not believe that it is appropriate to compromise the integrity of the payment determination at the expense of those inlier cases that actually benefit from and receive a full course of treatment at a LTCH, in order to include these very short-stays in the computation of the relative weights. (As noted in section X.A.2. of this preamble, stays of 8 days or over are included in the calculations of the relative weights on a fractional basis.)

Nevertheless, for payment purposes, we are treating LTCH stays of 7 days or less as short-stay outliers, since we believe that a LTCH should not be penalized for those occasions when, in good faith, it admits a patient, who shortly after admission, expires or is transferred to a more appropriate setting. We also believe that incorporating payments for stays of 7 days or less into the final short-stay outlier formula considerably simplifies the payment system.

After consideration of the public comments received and reevaluating our proposed policy, we are adopting as final a short-stay outlier policy that will apply to all LTCH admissions with a length of stay up to and including five-sixths of the geometric average length of stay of the LTC–DRG. The short-stay outlier policy will pay the least of 120 percent of the cost of the case, 120 percent of the LTC–DRG specific per diem amount multiplied by the length of stay for that discharge, or the full LTC–DRG payment.

D. Proposed Payments for Special Cases of Very Short-Stay Discharges

As mentioned earlier in section X.B. of this preamble, in the March 22, 2002 proposed rule, we proposed at § 412.527 to define a very short-stay discharge as a discharge that has a length of stay of 7 days or less (regardless of the LTC–DRG assignment), irrespective of the discharge designation (including cases where the patient expires). We indicated that a very short-stay discharge often occurs when it is determined, following admission to a LTCH, that the beneficiary would receive more appropriate care in another setting. For example, a patient may experience an acute episode or require more intensive rehabilitation therapy than is available at the LTCH. Other circumstances that we believed would warrant classification as a very short-stay discharge would involve patients who were either discharged to their home or who expired within the first 7 days of being admitted to a LTCH.

Since LTCHs are defined by statute as generally having an average length of stay greater than 25 days, we proposed to make an adjustment for very short-stay discharges in order to make appropriate payment to cases that may not necessarily require the type of services intended to be provided at a LTCH or may have been transferred from an acute hospital prematurely. Further, we believed that providing a special payment for very short-stay discharges neither encourages hospitals to admit patients for whom they knowingly are unable to provide complete treatment in order to maximize payment, nor severely penalizes providers that, in good faith, admit a patient and provide some services before realizing that the beneficiary will receive more appropriate treatment at another site of care.

As stated in the proposed rule, we also believed that establishing a special payment for a discharge with a very short length of stay is critical in implementing a discharge-based prospective payment system. Because the rates are set to be budget neutral, if we did not make an adjustment for stays significantly shorter than the average length of stay in a LTCH, providing a full prospective payment system payment for very short-stay LTCH cases would inappropriately reduce payments for nonshort-stay LTCH cases.

To improve the accuracy of the payments, we proposed to categorize very short-stay discharge cases into two categories based on the primary diagnosis—one for psychiatric cases and one for all other types of cases. We believed it would be appropriate to separate very short-stay discharge cases into psychiatric and nonpsychiatric categories because our analysis showed that the resources used to treat these two types of patients during the first 7 days differ significantly. In our simulations, combining psychiatric very short-stay discharge cases with all other very short-stay discharge cases resulted in a considerable ''overpayment'' for the very short-stay discharge psychiatric cases and a substantial ''underpayment'' of all other (nonpsychiatric) very short-stay discharge cases. A detailed explanation of the proposed split of very short-stay outliers into two categories and the proposed assignment to LTC–DRGs appears in the proposed rule published in the **Federal Register** on May 22, 2002 (67 FR 13453–13454). We proposed to calculate the relative weights for the two very short-stay discharge LTC–DRGs using the hospital-specific relative value methodology. The very short-stay discharge LTC–DRG per diem amount would have been determined by dividing the applicable Federal payment rate (Federal payment rate × LTC–DRG weight) by 7 days.

Comment: Many of the commenters questioned the basis for treating cases with a length of stay of 7 days or less as very short-stay discharges. They indicated that the policy ignores the difficult clinical decisions that LTCHs consistently face daily and that the policy will severely penalize providers who in good faith admit a patient, but the patient exhausts their Medicare Part A number of day benefits within 8 days of admission, or the patient's condition worsens and later needs treatment elsewhere, or the patient dies. They added that the very short-stay policy would create financial incentives for LTCHs to avoid patients close to the end of Medicare coverage for hospital stays, but who need LTCH care. These commenters suggested that the very short-stay policy be abandoned in favor

of an extension of the short-stay outlier policy to cases that have stays of 7 days or less.

Some commenters urged us to eliminate the ''cliff'' between the payment of a 7-day very short-stay and the payment of an 8-day short-stay outlier, which could be as much as $10,000, depending on the DRG. They indicated that this ''cliff'' could encourage LTCHs to keep patients extra days simply to receive the windfall that occurs at day 8 and suggested that we apply the proposed short-stay outlier policy to all stays of 7 days or less.

Response: Our data analyses of the MedPAR files from FY 1999 through FY 2000 originally led us to differentiate between LTCH stays of 7 days or less and those of more than 7 days, but still considerably less than the average length of stay for the LTC–DRG to which the stay was grouped. (See section X.C. for our discussion on short-stay outliers.) However, after reconsidering the policy in light of the commenters' concerns, including the need to eliminate the incentive for LTCHs to keep patients additional days simply to receive the monetary windfall that occurs with a payment ''cliff'', we have decided to eliminate this category of patient stays, and instead, extend the now revised short-stay outlier policy to stays of 7 days or less, as discussed in detail in section X.C. of this final rule.

The short-stay outlier policy, when extended to stays of 7 days or less, addresses our concerns of ''overpaying'' for incomplete treatment, while also recognizing and appropriately compensating LTCHs for expenses related to treating patients that have a shortened length of stay due to deaths or for care of patients who are not actually discharged, but whose Medicare coverage is exhausted within 7 days or less of their admission. (The issue of deaths occurring within the first 7 days is discussed in more detail in the next comment.) Specifically, with regard to the commenters' concerns about patients who exhaust their Medicare coverage in 7 days or less of their stay in the LTCH, since many LTCH patients are admitted to a LTCH following a hospitalization at an acute care hospital, it is possible that a patient who could benefit from continued medical care at a LTCH could have used up the maximum 150 Medicare days allowed for that spell of illness. We wish to clarify that under the final rule, Medicare payments for patients that have 7 days or less remaining days of Medicare coverage will receive payment based on the revised short-stay outlier policy in this final rule.

With respect to patients whose conditions suddenly worsen within the first 7 days of admission, while the ultimate outcome for any given patient may be difficult to predict at the time of admission, LTCHs by and large should be admitting patients who predictably need the particular type of care that LTCHs offer. LTCH patients often present with multiple comorbidities, but their overall condition in most cases should be relatively stable if they were discharged from an acute care hospital and do not require the intense intervention associated with acute care hospitals. Further, in admitting such patients, we believe that LTCH personnel should determine that these patients actually require and can benefit from hospital-level care for what is intended to be an average stay of greater than 25 days. Even if a LTCH is focusing on admitting the appropriate types of patients, it may still infrequently admit patients whose conditions suddenly worsen. We believe that the number of unpredictable cases would be small, and payment for simpler cases, requiring fewer resources, should typically balance out higher cost cases of stays that are 7 days or less that are unforeseeable.

In addition, we note that with the elimination of the very short-stay discharge policy, most cases with a stay of 7 days or less will now be paid at the higher DRG-specific short-stay outlier rate. Moreover, for the highly unusual phenomenon of a short-stay case that actually falls into the high-cost outlier category, outlier payments will be available once the patient's costs exceed the payments under the short-stay outlier policy and the fixed loss threshold, under § 412.525.

Based on our policy revision regarding the elimination of the very short-stay discharge payment category, we do not anticipate any penalty, as described by the commenter, for stays of 7 days or less that were admitted in good faith. In establishing a payment category for shorter stays that, in an increasing progression, reflects the LTCH resources used for a specific episode of care, we believe that we have effectively and equitably addressed the problem of treating short-term patients in a LTCH.

We appreciate the comments concerning the ''payment cliff,'' which potentially could have provided a significant incentive for LTCHs to keep patients who would otherwise have been paid for as very short-stay discharges. Our concern also about this ''cliff'' effect created by payments under the proposed very short-stay policy contributed to our decision to eliminate the policy. In this final rule, we are establishing a policy for all cases with a length of stay up to and including five-sixths of the geometric average length of stay of the specific LTC–DRG (including stays of 7 days or less). These cases will be paid under the short-stay outlier policy, thus eliminating the incentives present with the ''cliff.'' Under the short-stay outlier policy, there will be a steady daily increase in payments beginning with the first day, without a windfall payment on any given day, as described in section X.C. of this preamble, and LTCHs will be encouraged to base discharge decisions on clinical judgment rather than on financial gain.

Comment: Some commenters indicated that the severity of a LTCH patient's medical condition is typically very high upon admission, requiring significant resources and resulting in high costs within the first several days. The commenters pointed out that the DRG weights assigned to the proposed very short-stay discharges for determining the payment ignores this fact. As a result, LTCHs would not receive adequate reimbursement for these services. The commenters pointed out that there are high costs associated with patients who receive high intensity ''code blue'' services, including patients who expire. They recommended the establishment of a separate DRG for patient expiration cases that would have a higher case weight than the proposed very short-stay discharge DRGs.

Response: While we understand the commenters' concerns, we point out that, even under the now eliminated proposed very short-stay discharge policy, payment was based on two LTC–DRGs, one for psychiatric cases and one for nonpsychiatric cases. The computation of the weights for those LTC–DRGs did include total charges for all such cases, and generally, payments would have been based on LTC–DRG weights that have balanced out the most complex admissions with the simpler admissions. Under the final rule, payments for stays of 7 days or less will likely be higher under the revised short-stay outlier policy that we are adopting as outlined in section X.C. of this preamble, and payments will be LTC–DRG specific, with rates reflecting relative medical complexity and severity of a patient condition. We believe that this revision in our short-stay policy addresses the commenters' concerns.

With regard to the commenters' suggestion that we create a separate DRG to compensate for the high costs associated with patients who expire, with our elimination of the proposed

very short-stay discharge policy, payments for these patients will also be paid under the short-stay outlier policy. Under the short-stay outlier policy, each case is classified into a LTC–DRG and the per diem payment adjustment is based on our calculations of relative resource use for that LTC–DRG. As we note in section X.A. of this preamble, LTC–DRG weights were derived from data simulations that were adjusted for short-stay outliers and included deaths that occurred prior to the short-stay outlier threshold for each LTC–DRG. In addition, adjusted payments for each case that fall within the short-stay outlier category, based on the least of 120 percent of the cost of the case, 120 percent of the LTC–DRG specific per diem amount multiplied by the length of stay, or the full LTC–DRG payment, should generally compensate for any increased costs associated with treating a severely sick patient who dies. Moreover, in keeping with the principles underlying prospective payments, even if a hospital did not profit, or even recover its costs for a specific case, there are other cases for which the hospital will receive payment in excess of its costs. Therefore, we do not believe that a separate DRG is necessary for patient expiration cases.

Accordingly, based on our analysis of the public comments received and our further evaluation of the proposed very short-stay policy, we have decided not to implement the very short-stay policy as proposed. We are removing the proposed § 412.527 from the regulation text and not adopting it as final. Instead, we are extending the short-stay outlier policy to all stays up to and including five-sixths of the geometric average length of stay for the specific LTC–DRG, as discussed in detail under section X.C. of this preamble.

E. Special Cases: Interrupted Stay

In the March 22, 2002 proposed rule, we proposed to define cases involving an interruption of a stay in a LTCH as those cases in which a LTCH patient is discharged to an inpatient acute care hospital, an IRF, or a SNF for treatment or services not available at the LTCH for a specified period followed by readmittance to the same LTCH (§ 412.531). For a discharge to an acute care hospital, the proposed period of interruption was within (less than or equal to) one standard deviation from the arithmetic average length of stay for the DRG assigned for the inpatient acute care hospital stay. For a discharge to an IRF, the proposed period of interruption was within one standard deviation from the arithmetic average length of stay for the CMG and the comorbidity tier assigned for the IRF stay. For a discharge to a SNF, the proposed period of interruption was within 45 days in a SNF (that is, one standard deviation from the average length of stay for all Medicare SNF cases).

In considering an appropriate proposed interrupted stay threshold, we attempted to balance the payment incentives of both the LTCH and the acute care hospital, IRF, or SNF to which the LTCH patient is discharged before being readmitted to the LTCH. In order to assure that discharges from LTCHs are based on clinical considerations and not financial incentives, we proposed that the interrupted stay day threshold would only pay the LTCH for more than one discharge if the patient's length of stay at the acute care hospital, IRF, or SNF exceeded one standard deviation from the average length of stay for the DRG, the combination of the CMG and the comorbidity tier, or for all Medicare SNF cases, respectively. We believed this would have made it more difficult for a LTCH to find a prospectively paid acute care hospital, IRF, or SNF that would admit a LTCH patient just to allow the LTCH to receive two separate LTC–DRG payments.

We believed that the proposed interrupted stay day threshold of one standard deviation from the average length of stay for either the acute care hospital DRG, the IRF combination of the CMG and the comorbidity tier, or for all Medicare SNF cases would provide the appropriate disincentive since cases that stay significantly longer than the average length of stay are more costly than the average case. Since the SNF prospective payment system is a per diem system and not a per discharge system, we proposed to implement the same threshold for all SNF cases regardless of the resource utilization group (RUG) classification used for SNF payment. We believed the proposed interrupted stay threshold was appropriate because, in general, the average length of stay plus one standard deviation would capture the majority of the discharges that are similar to the average length of stay for the respective DRG, combination CMG and comorbidity tier, or for all Medicare SNF cases. In addition, this proposal was consistent with the basis for our payment policy for new technologies under the acute care hospital inpatient prospective payment system where the cost of a new technology must exceed one standard deviation beyond the mean standardized charge for all cases in the DRG to which the new technology is assigned in order to receive additional payments (see the September 7, 2001 inpatient hospital final rule, 66 FR 46914). Under the proposed rule, the counting of the days for the interruption of the stay would begin on the day of discharge from the LTCH and end on the day the patient is readmitted to the LTCH.

For the purposes of payment under the LTCH prospective payment system, we proposed that a case that meets the definition of an interrupted stay would be considered a single discharge from the LTCH, and, therefore, would receive only one LTC–DRG payment. Since the two LTCH stays are considered as a single case for the purposes of payment under the LTCH prospective payment system, the second discharge from the LTCH is included in the single LTC–DRG payment. The acute care hospital, the IRF, or the SNF stay would be paid in accordance with the applicable payment policies for those providers.

We also proposed to make one discharge payment under the LTCH prospective payment system for an interrupted stay case, as defined under § 412.531(a), to reduce the incentives inherent in a discharged-based prospective payment system of ''shifting'' patients between Medicare-covered sites of care in order to maximize Medicare payments. We believed that the proposed policy was particularly appropriate for LTCHs since, as a group, these hospitals are considerably diverse and offer a broad range of services such that where some LTCHs may be able to handle certain acute conditions, others will need to transfer their patients to acute care hospitals. (Section V.C. of this preamble contains a description of the universe of LTCHs.)

For instance, some LTCHs are equipped with operating rooms and intensive care units and are capable of performing some surgeries. However, other LTCHs are unable to provide those services and will need to transfer the beneficiary to an acute care hospital. Similarly, a patient who no longer requires hospital-level care, but is not ready to return to the community, could be transferred to a SNF. This incentive to ''shift'' patients between Medicare-covered sites of care in order to maximize Medicare payments is of a particular concern when the LTCH is physically located within the walls of another hospital. Often, the LTCH patient may not even be aware of a transfer to the other hospital or SNF because he or she will have only been moved down the hall or to another wing of the building. Moreover, our research reveals that hospitals-within-hospitals are the fastest growing type of LTCH. We also believe that the same incentives

for inappropriate discharges and readmittance exist for satellite LTCHs that are located within acute care hospitals, described in § 412.22(h), as well as for distinct part SNFs co-located with LTCHs. (We address the particular issues of onsite discharges and readmittances in section X.G. (§ 412.532(d)) in this final rule.)

We proposed that whether or not a LTCH patient who is discharged to an inpatient acute care hospital, an IRF, or a SNF and then returns to the same LTCH is treated as an interrupted stay (with one LTC–DRG payment) or as a new admission (with two separate LTC–DRG payments) depended on the patient's length of stay at the acute care hospital, IRF, or SNF compared to the arithmetic average length of stay and the standard deviation for the acute care hospital inpatient prospective payment system DRG, the IRF combination of the CMG and the comorbidity tier, or 45 days for all Medicare SNF cases. In the proposed rule, we specified in tables the arithmetic average length of stay and one standard deviation for each acute care hospital DRG and each IRF combination of the CMG and the comorbidity tier. (As noted above, this was not necessary for SNFs, as we used a set number of days for SNF stays in the proposed rule.)

While the proposed interrupted stay policy under § 412.531 was based in part on clinical considerations, we realized that it may be somewhat administratively burdensome for the LTCH to determine the DRG for the acute care hospital stay or the combination of the CMG and the comorbidity tier for the IRF stay, in order to determine whether or not a beneficiary who is discharged to an acute care hospital or an IRF and then returns to the LTCH would be an interrupted stay (with a single LTCH prospective payment system payment) or a new admission (with two separate LTCH prospective payment system payments). Therefore, we discussed in the proposed rule our intent to further analyze Medicare claims data to determine if we should consider treating all patients who are discharged to either an acute care hospital or an IRF and admitted back to the LTCH within a fixed number of days (as we had proposed for SNFs), regardless of the DRG of the patient in the acute care hospital or the combination of the CMG and the comorbidity tier of the patient in the IRF, as an interrupted stay. We indicated that 9 days for acute care hospitals and 27 days for IRFs might be appropriate thresholds to identify interrupted stay cases because, in both cases, the thresholds are one standard deviation from the average length of stay of all patients in those respective settings. We were aware that, under such a policy, less clinically complex brief acute care hospital and IRF stays would be included and would become an interrupted stay if the beneficiary returns to a LTCH. However, those types of cases would be offset by other stays that require more intensive and lengthy care.

For this final rule, we have decided to treat all patients who are discharged to either an acute care hospital or an IRF and admitted back to the LTCH within a fixed period of time (as we did in the proposed rule for discharges to SNFs), regardless of the DRG or the combination CMG and comorbidity tier, as an interrupted stay. This decision will relieve the administrative burden on providers and eliminate the need to make claims billing system changes, as discussed in our responses to the first two public comments in this section. We believe that 9 days for acute care hospital stays and 27 days for IRF stays are appropriate thresholds to identify interrupted stay cases because, in both cases, the thresholds are one standard deviation from the average length of stay of all patients in those respective settings. We are retaining as final the proposed 45-day threshold for SNFs.

Comment: Over half of the commenters objected to our proposed policy for determining the LTC–DRG payment for an interrupted stay (with a single LTCH prospective payment system payment) based on a number-of-day threshold that equals one standard deviation from the average length of stay for the DRG for the acute care hospital or the IRF combination of CMG and comorbidity tier for the IRF stay. The same commenters did not object to the proposed policy for SNFs, because it used a specified number of days (45) for all stays in a SNF for computing the period of interruption.

The commenters believed that (1) the proposed methodology for acute care hospitals and IRF stays would be an extreme administrative burden on providers; (2) it would be difficult for LTCHs to determine assigned DRGs and CMGs and comorbidity tiers and length of stays (discharge and readmittance dates) during the interruption for these cases; and (3) the proposed policy would be too costly for both providers and intermediaries to implement within the Medicare claims billing and data systems. Some commenters believed there might be an issue of possible compromise of the Privacy Rule relating to disclosure of certain individually identifiable patient health information to certain entities under the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Response: In the proposed rule, we acknowledged that it might be somewhat administratively burdensome to determine the DRG for the acute care hospital stay or the combination of the CMG and the comorbidity tier for the IRF stay in order to determine whether or not a beneficiary who is discharged to an acute care hospital or an IRF and then returns to the LTCH will be considered an interrupted stay (with a single LTCH prospective payment system payment) or a new admission (with two separate LTCH prospective payment system payments). For that reason, we solicited specific comments on an alternative methodology.

We have further evaluated our proposal and agree that LTCHs might be unnecessarily burdened if they were required to determine the other facility's assigned DRGs and CMG and comordibity tiers for the interruption and that numerous changes would have to be made to the Medicare billing and data systems to implement the policy. As a result, we agree with the commenters that it is more feasible to implement the proposed alternative methodology for determining the LTC–DRG payment for interrupted stays based on a fixed day threshold for each provider level of care, as discussed in our response to the next comment. This policy change should relieve most of the administrative burden that the commenters were concerned with and eliminate the need to determine the DRGs and CMGs and comorbidity tiers assigned to the patient at the other facility. In response to the commenters' concern regarding HIPPA, even under the proposed rule, we do not believe privacy implications under HIPPA would have been implicated.

Comment: In response to our request for alternatives to the proposed methodology for determining the interruption of stay threshold, commenters recommended several methodologies for assigning a fixed number of days of absences at each provider level for determining an interrupted stay. Specifically, some commenters agreed with our proposed alternatives of a 9-day threshold for acute care hospital stays, a 27-day threshold for IRF stays, and retention of the 45-day threshold for SNF stays. One commenter believed that the 45-day threshold for SNFs is too long. Other commenters recommended one of the following for all sites: (1) A 9-day threshold, regardless of the service codes or discharge setting; (2) a threshold range of 10 to 12 days or 11 days or less; or (3) a fixed threshold that

reflects the average length of stay of hospitalizations for all DRGs. Two commenters recommended not including any interrupted stay policies in the final rule. One commenter suggested that any positive or negative effects of the 9-day, 27-day, and 45-day thresholds on budget neutrality as set forth in the proposed rule be adjusted through the standard Federal payment amount.

Response: After consideration of the public comments and our further analysis of MedPAR data, we are revising the proposed thresholds under our interrupted stay policy, as it relates to discharges to acute care hospitals and IRFs, to incorporate a fixed period of time. For this final rule, we have decided to treat all patients who are discharged to either an acute care hospital or an IRF and admitted back to the LTCH within a fixed period of time (as we did in the proposed rule for discharges to SNFs), regardless of the DRG or the combination CMG and comorbidity tier, as an interrupted stay. We believe that 9 days for acute care hospital stays and 27 days for IRF stays are appropriate thresholds to identify interrupted stay cases because, in both cases, the thresholds are set at one standard deviation from the average length of stay of all patients in those respective settings. We are retaining in the final rule the proposed 45-day threshold for SNFs. We do not agree with the commenter who stated that the 45-day threshold for SNFs is too long. A length of stay of 45 days is the average number of days plus one standard deviation for all SNF Medicare patients. In addition, we are not adopting the commenters' suggestion that we dispense with the interrupted stay policy because we believe this policy is an essential component of the LTCH prospective payment system, as explained elsewhere in this section.

In response to the comment about the impact that any revised interrupted stay policy will have on the budget neutrality calculations, we wish to assure the commenter that the interrupted stay policy in this final rule is one of several policies that have been revised based on public comments and taken into consideration in developing the final standard Federal prospective payment rates for FY 2003. The recalibration of the prospective payment rates in this final rule based on those revisions will continue to satisfy the statutory requirement for budget neutrality.

Comment: Some commenters believed the payment system should not penalize those providers who make clinically appropriate transfers. Four commenters indicated that, based on experience, the number of readmissions to LTCHs are minimal, especially from IRFs and SNFs, and questioned CMS data on interruptions of stays at LTCHs. These commenters objected to the proposed interrupted stay policy because they believed it would impose a significant burden solely to prevent certain questionable transfers that rightfully should be reviewed on an individual basis for appropriateness.

Response: We proposed making one payment under the LTCH prospective payment system for an interrupted stay to preserve the integrity of the per discharge LTCH prospective payment system. We are not attempting to restrict a LTCH from pursuing necessary clinical care from another facility. However, we do not believe it is appropriate for the LTCH to receive a second payment for a patient if the patient returns to the LTCH to complete treatment already begun in the LTCH at the time of the earlier admission. Nowhere in the interrupted stay policy are we suggesting that the treatment at the secondary site would be unnecessary or clinically inadvisable. In addition, we believe that LTCHs, certified as acute care hospitals, should generally be able to handle nonsurgical urgent care needs. Therefore, the need to transfer should not arise as frequently as it might from a different provider. While we did not base this policy on specific data, and at this point we cannot quantify the number of readmissions to LTCHs, the interrupted stay policy is intended, in part, to reduce the incentives inherent in a discharge-based prospective payment system of ''shifting'' patients between Medicare-covered sites of care in order to maximize Medicare payments. We believe that payment under this policy is fair and is particularly appropriate for LTCHs since, by definition, the hospital treats patients with an average length of stay of greater than 25 days, and while payments are determined based on average lengths of stay, there may be an incentive for the LTCH to discharge the patient for part of that stay to another hospital. We believe we have eliminated the significant burden that the commenters were concerned with by revising the threshold criteria, as discussed earlier.

Comment: A few commenters suggested that cases that are readmitted to the LTCH from another facility in less than the specified timeframe should be treated as separate cases under the LTCH prospective payment system if the second admission to the LTCH is unrelated to the primary reason for the initial admission.

Response: As noted above, under the interrupted stay policy that we are adopting in this final rule, if the patient's length of stay away from the LTCH does not exceed the fixed day thresholds, the return to the LTCH is considered part of the first admission and will be paid as one admission. The situation the commenters describe is, and will continue to be, viewed as one stay. In section VIII. of this preamble, we provide details on patient classifications by DRG and highlight the fact that the principal diagnosis and secondary diagnoses form the basis upon which a LTC–DRG will be assigned for the entire stay. On the other hand, if the patient exceeds the total fixed day threshold outside of the LTCH at another facility before being readmitted, two separate LTC–DRG payments would be made, one based on the principal diagnosis for the first admittance and the other based on the principal diagnosis for the second admittance. If the principal diagnoses are the same for both admissions, the hospital could receive two similar payments.

If the LTCH stay were not interrupted, the patient still could have developed other indications or complicating factors while in the LTCH. In this situation, grouping for the LTC–DRG would be based predominantly on the principal diagnosis, along with data from complicating secondary or additional diagnoses, any procedures, and age, gender, and discharge status as is done under the acute care hospital inpatient prospective payment DRG system. However, secondary diagnoses that have no bearing on the LTCH stay may be discarded by the GROUPER software when classifying cases for the purposes of determining payment. The presence of additional diagnoses does not automatically generate a comorbid or complicating condition for all DRGs, as explained in section IX.E. of this preamble relating to the ICD–9–CM coding system. In a situation of an interrupted stay or a stay that is not considered an interrupted stay, comorbidity could develop and the principal diagnosis would still be the factor most significantly affecting the DRG assignment.

The acute care hospital inpatient prospective payment system, upon which we based the LTCH prospective payment system, treats one stay at an acute care facility similarly, where cases are classified into DRGs for payment based on the patient's principal diagnosis. Additional or secondary diagnoses may be recorded and may slightly influence DRG assignment for a case. However, the principal diagnosis,

with which the patient originally entered the acute care facility, is the dominant indicator for the DRG assignment.

In addition, the typical LTCH patient has multiple, complex medical problems represented by several ICD–9–CM codes that will be listed on any one patient's claim. If we were to allow a new LTC–DRG assignment after an interrupted stay based solely upon whether one of these other conditions had increased in severity, it would not be difficult for the LTCH to select a different principal diagnosis following the patient's return to the LTCH. Medicare would then make two payments for what was, in reality, one single episode of treatment for the type of patient who is ideally suited for hospitalization in a LTCH, a very sick patient with multiple comorbidities.

A DRG-based prospective payment system is designed to set payment at an average of hospital charges for all admittances of a particular type of diagnosis. This average should reflect more complex and costly cases along with cases that require less care. As cases are paid based on an average, some less resource intensive cases of the same diagnosis will receive the same payment as more resource intensive cases. Overall, under prospective payment systems, hospitals that are efficient will receive fair compensation. We believe that this payment system ultimately results in more equitable payments for LTCHs.

Comment: One commenter questioned why there is not an interrupted stay policy for discharge and readmittance between one LTCH and another LTCH.

Response: In our data, we did not find that transfers between LTCHs occurred frequently enough to require a separate policy. However, we will be monitoring LTCH behavior and if, in the future, we become aware of data that indicate that this activity is occurring, we would revisit this issue.

Comment: One commenter questioned whether the following scenario would be considered an interrupted stay: a LTCH patient is discharged to an acute care hospital for 3 days, the acute care hospital then discharges the patient to a SNF for 43 days, and then the patient is readmitted to the LTCH.

Response: In this final rule, the interrupted stay policy only encompasses situations where a patient is discharged from a LTCH to another facility and then readmitted directly from that one facility to the same LTCH. It does not address situations where the patient is admitted to more than one facility or goes home between LTCH stays. Our data did not show this situation to be a significant problem. Therefore, at this time we are not extending the interrupted stay policy to this situation. Currently, a patient admitted to a LTCH who is subsequently discharged to home or to at least two other facilities before readmission at the LTCH will be paid for as two admissions, and not be subject to the interrupted stay policy. However, we will continue to monitor LTCH readmissions and should the above example, where the LTCH patient has multiple short stays in several facilities before readmission, prove to be significant, we will consider proposing a change in policy.

Comment: One commenter asked whether, for hospitals paid under the 5-year transition, an interrupted stay under the LTCH prospective payment system would still qualify as two discharges for TEFRA payment purposes.

Response: As explained earlier in section VIII. of this preamble, we are implementing a 5-year transition period from reasonable cost-based reimbursement to fully Federal prospective payment for LTCHs. During this period, two payment percentages will be used to determine a LTCH's total payment. The blend percentages can be found in sections II.D. and X.N. of this final rule. The interrupted stay policy will apply to the portion of the blended percentage that represents the prospective payment Federal rate percentage.

TEFRA policy on readmissions will apply to the portion of the blended percentage that represents the reasonable cost-based reimbursement percentage. Under TEFRA policy, each admission and discharge is counted separately as two discharges with no consideration given to the length of stay at another facility before readmission. However, there is one scenario when, even under the TEFRA payment policy, two discharges from a LTCH will be counted as one stay for payment purposes. There are specific TEFRA regulations governing readmission to excluded hospitals, such as LTCHs, with regard to hospitals-within-hospitals at § 413.40(a)(3) (July 30, 1999, **Federal Register**, 64 FR 41535). During a cost reporting period, if the hospital-within-a-hospital discharges more than 5 percent of its inpatients to another co-located hospital, and those patients are directly readmitted to the excluded hospital, Medicare considers each patient's entire stay as one discharge for purposes of calculating the cost per discharge of the excluded hospital. This policy is still in effect for the TEFRA portion of the payment blend for long-term care hospitals-within-hospitals. (For more information on how a hospital-within-a-hospital would be paid under the LTCH prospective payment system, see section X.G. of this preamble, which outlines onsite discharge and readmission policy.) Therefore, other than this particular scenario for LTCHs that are hospitals-within-hospitals, for an episode of patient care that, under the LTCH prospective payment system, would be paid as an interrupted stay, the portion of payments under TEFRA paid to LTCHs during the transition period will continue to count separately for each discharge from the LTCH.

Accordingly, based on the public comments received and our further analysis of Medicare claims data, in this final rule we are adopting the proposed interrupted stay policy as final with the following changes. We are revising the interrupted day threshold so that patients who are discharged from a LTCH to an acute care hospital and readmitted to the LTCH within a 9-day period of time will be considered as an interrupted stay and only a single LTCH prospective payment system payment will be made. To be considered an interrupted stay for patients who are discharged from the LTCH to an IRF and readmitted to the LTCH, the fixed day threshold is 27 days. We are retaining as final the proposed 45-day threshold for discharges from a LTCH to a SNF and readmission to the LTCH. Any readmissions to a LTCH from these three provider levels of care that are subsequently discharged from the LTCH that involve interruptions that are longer than these thresholds will be treated as new admissions and two separate LTCH prospective payments will be made.

We wish to point out that an interrupted stay could occur during a regular inlier case (length of stay greater than five-sixths of the geometric average length of stay for the LTC–DRG), as described in section X.A. of this final rule. A short-stay outlier (as explained in section X.C. of this preamble) could also become an interrupted stay if the beneficiary is discharged to an acute care hospital, an IRF, or a SNF. Whether or not the beneficiary's stay would remain in this category depends on the total length of stay in the LTCH. Upon the initial discharge to the acute care hospital, the IRF, or the SNF, the LTCH ''day count'' would stop. For an interrupted stay case, this count is resumed upon readmission to the LTCH until the beneficiary's final discharge (home, another site of care, or death). Thus, the period of absence (number of days) that the beneficiary is a patient in

the acute care hospital, the IRF, or the SNF during a LTCH interrupted stay is not included in determining the length of stay of the LTCH stay.

If the total number of days at the LTCH, from the initial admission to the final discharge, still falls into the short-stay outlier payment category, the LTCH receives payment according to the short-stay outlier policy described in section X.C. of this preamble. If, on the other hand, the total number of days in the LTCH exceeds five-sixths of the geometric average length of stay of the LTC–DRG (the short-stay outlier criteria), one full LTC–DRG payment is made for the case. Moreover, all applicable payment policies, including outliers and transfers for the acute care hospital inpatient prospective payment system and the IRF prospective payment system still apply under this policy.

The following are examples of possible ways in which these policies would interact:

Example 1: A beneficiary stays in the LTCH for 5 days and is discharged to an inpatient acute care hospital and the length of stay at the acute care hospital is greater than 9 days before being discharged and readmitted back to the LTCH. Medicare hospital payments for this beneficiary are as follows:

- One short-stay outlier LTCH prospective payment system payment to the LTCH for the first (5-day length of stay) LTCH discharge.
- Payment to the acute care hospital under the acute care hospital inpatient prospective payment system for the acute care stay.
- A separate LTCH prospective payment system payment either as a short-stay outlier (see § 412.529) or regular inlier case (as described in section X.A.2. of this preamble), depending on the second LTCH length of stay.

This case would not be an interrupted stay because the acute care hospital stay was greater than 9 days, which represents more days than one standard deviation from the average length of stay under the acute care hospital inpatient prospective payment system for all DRGs.

Example 2: A beneficiary stays in the LTCH for 5 days and is discharged to an inpatient acute care hospital and the length of stay at the acute care hospital is a number of days that is 9 days or less before being discharged and readmitted back to the LTCH. The beneficiary remains in the LTCH for an additional 9 days after readmission to the LTCH following the acute care hospital stay. This case would be treated as an interrupted stay and Medicare hospital payments for this beneficiary would be as follows:

- Payment to the acute care hospital under the acute care hospital inpatient prospective payment system for the DRG for the acute care hospital stay.
- The stay was interrupted because the acute care hospital stay was 9 days or less. Therefore, a single payment will be made to the LTCH under the LTCH prospective payment system. This payment would be a short-stay outlier payment (under § 412.529) if the total LTCH length of stay (14 days) is up to and including five-sixths of the geometric average length of stay of the LTC–DRG. If the total LTCH length of stay is greater than five-sixths of the geometric average length of stay of the LTC–DRG, then the LTCH would receive the full DRG payment.

Example 3: A beneficiary stays in the LTCH for 5 days and is discharged to an IRF and the length of stay at the IRF is 27 days or less. The beneficiary is readmitted to the LTCH for an additional 12 days, so that the combined 17 days is greater than five-sixths of the geometric average length of stay for the LTC–DRG after readmission to the LTCH following the IRF stay. This case will be an interrupted stay and Medicare hospital payments for this beneficiary will be as follows:

- Payment to the IRF under the IRF prospective payment system for the combination of the CMG and the comorbidity tier for the IRF stay; and
- Since the stay was interrupted because the IRF stay was within one standard deviation from the geometric average length of stay at an IRF, a single payment will be made under LTCH prospective payment system. This payment will be a full LTC–DRG payment because the total LTCH length of stay is greater than five-sixths of the geometric average length of stay of the LTC–DRG.

In Example 2 and Example 3, upon return to the LTCH following the discharge from the acute care hospital or the IRF, the day count will be resumed at day 6 of the LTCH stay. If the beneficiary was then discharged within a period that is up to and including five-sixths of the geometric average length of stay for the LTC–DRG, the stay will be paid as a short-stay outlier (see § 412.529); and if the beneficiary was discharged beyond the short-stay threshold (five-sixths of the geometric average length of stay for the LTC–DRG), the case will be paid for the full LTC–DRG.

F. Other Special Cases

Under other Medicare prospective payment systems, specifically for inpatient acute care hospitals and for IRFs, there are separate policies for other types of special cases such as transfer cases and patients who expire. As stated in the proposed rule, we continue to believe the short-stay outlier policy (under § 412.529) and the interrupted stay policy (under § 412.531) will adequately address these circumstances. For instance, a case with a stay that is up to and including five-sixths of the geometric average length of stay of the LTC–DRG will be paid under the short-stay outlier policy regardless of whether or not the patient is transferred upon discharge to his or her home or to another setting where Medicare will make additional payments, or whether the patient expired. Moreover, if a beneficiary's stay at the LTCH is greater than five-sixths of the geometric average length of stay of the LTC–DRG, a full LTC–DRG payment will be made regardless of the destination following discharge. Therefore, in this final rule, we are not implementing a separate policy for cases that are transferred (except for those that are encompassed by the interrupted stay policy) or for patients who expire.

Currently, under the acute care hospital inpatient prospective payment system, discharges in 10 DRGs are considered to be transfers if the patients are discharged to another Medicare postacute site of care, such as a LTCH, under section 1886(d)(5)(J)(ii) of the Act and implemented in regulations at § 412.4. The rationale behind this provision was Congressional concern that Medicare may, in some cases, be ''overpaying hospitals for patients who are transferred to a postacute care setting after a very short acute care hospital stay.'' (Conference Agreement, H.R. Conf. Rept. No. 105–217, 105th Cong., 1st Sess., at 740 (1997).) In such a scenario, Medicare will also have to pay the postacute care provider for care that theoretically could have been provided at the acute care hospital. Section 1886(d)(5)(J)(iv) of the Act authorizes the Secretary to expand the postacute care transfer policy to additional DRGs. From the standpoint of LTCHs, the impact of expanding the acute care hospital inpatient prospective payment system postacute care transfer policy could be significant for the LTCH prospective payment system since this policy could affect behavior at acute care hospitals. If additional discharges will be paid as transfers, these patients may be kept longer at acute care hospitals in order to avoid a reduced payment for the transfer and then have a shorter length of stay during the subsequent stay at the LTCH. Presently, approximately 70 percent of LTCH Medicare patients are admitted following discharge from an acute care hospital. In the FY 2003 acute care hospital inpatient prospective payment system proposed rule (67 FR 31455), we solicited public comment on the feasibility of an expansion of the postacute care transfer policy (10-DRG policy). However, based on the public comments received, as described in the acute care hospital inpatient prospective payment system final rule on August 1, 2002 (67 FR 50048–50052), we decided not to expand this policy for FY 2003, but to further study the issue for consideration at a later date.

Comment: One commenter argued against a possible expansion of the inpatient acute hospital postacute care transfer policy to LTCHs because of its possible effects on LTCHs.

Response: As we indicated above, we have decided to postpone any expansion of the postacute care transfer policy under the acute care hospital inpatient prospective payment system until we have done further study and evaluation.

G. Onsite Discharges and Readmittances

As we explained above, we do not believe that a separate policy governing transfers of Medicare patients between LTCHs and acute care hospitals is necessary at this time. However, we are implementing a policy that will address transfers between LTCHs and distinct-part SNFs, acute care hospitals, IRFs, or psychiatric facilities when the LTCH and any of these other providers are co-located because of the potential for inappropriate shifting of patients among these providers without clinical justification to maximize Medicare payment. This situation may occur when a distinct-part SNF is part of a LTCH or when the LTCH is located within an acute care hospital or an IRF as either a ''hospital-within-a-hospital (as defined in § 412.22(e)) or a ''satellite facility'' (as defined in § 412.22(h)) and a distinct-part SNF (as defined in section 1819(a) of the Act) is also part of the same acute care hospital or IRF. (Section V.C.9. of this preamble describes findings from Urban's research on the admission and discharge patterns between LTCHs and SNFs.)

Similarly, a long-term care ''hospital-within-a-hospital'' or satellite facility may be co-located with a psychiatric or rehabilitation hospital that is also a hospital within the same acute care hospital or is a satellite facility situated in the same acute care hospital (§§ 412.25 and 412.27), or may be co-located in an acute care hospital with a psychiatric unit (§ 412.27) or a satellite psychiatric or rehabilitation unit (§ 412.25(e)).

We believe that a per discharge system, such as the prospective payment system for LTCHs, could provide inappropriate incentives to prematurely discharge patients to one of these other onsite providers once their lengths of stay at the LTCH exceeded the thresholds established by the short-stay outlier policies described in section X.C. of this preamble. These discharges will be based on payment considerations rather than on a clinical basis as an extension of the normal progression of appropriate patient care. If the long-term care hospital-within-a-hospital inappropriately discharges Medicare patients to the distinct-part SNF, or the onsite IRF, psychiatric facility, or acute care hospital without providing a complete episode of hospital-level care, Medicare will make inappropriate payments to the long-term care hospital-within-a-hospital, since payments under the prospective payment system will have been calculated based on a complete episode of such care. This type of a case could then be followed by a readmission to the LTCH from the onsite provider for an additional LTC–DRG payment. (In the case of a discharge from a LTCH to an offsite acute care hospital, an IRF, or a SNF with a subsequent return to the LTCH, payments will also be considered under the interrupted stay policy set forth at section X.E. of this final rule and at § 412.531.)

In determining an appropriate response to onsite discharges and readmittances, we are implementing a policy consistent with our policy described in the July 30, 1999 acute care hospital inpatient prospective payment system final rule (64 FR 41535) that addresses inappropriate discharges of patients between an acute care hospital inpatient prospective payment system excluded hospital-within-a-hospital (such as a LTCH) to the host acute care hospital, that culminated in a readmission to the hospital-within-a-hospital. In that context, we expressed the same concern noted above—that these types of moves were occurring for financial rather than clinical reasons. In order to discourage these practices, we implemented regulations at § 413.40(a)(3) to specify how to calculate the cost per discharge under the excluded hospital payment provisions. Under those regulations, during a cost reporting period, if the hospital-within-a-hospital discharges more than 5 percent of its inpatients to the acute care hospital where it is located, and those patients are readmitted to the excluded hospital-within-a-hospital, Medicare considers each patient's entire stay as one discharge for purposes of calculating the cost per discharge of the excluded hospital-within-a-hospital. In determining whether a patient has previously been discharged and then readmitted, we consider all prior discharges, even if the discharge occurs late in one cost reporting period and the readmission occurs in the next cost reporting period. Only when the excluded hospital's number of cases involving a discharge from the excluded hospital-within-a-hospital to the host acute care hospital followed by a readmission to the hospital-within-a-hospital exceed 5 percent of the total number of its discharges in a particular cost reporting period are the first discharges not counted for payment purposes. (If the 5-percent threshold is not triggered, all discharges are counted separately.)

With the implementation of the per discharge prospective payment system for LTCHs, in this final rule and in the proposed rule, we are adopting a similar policy to address inappropriate discharges and readmittances between LTCHs and other onsite providers by establishing a threshold beyond which the original patient stay and the readmission will be paid as one discharge (see § 412.532). By paying only one discharge, we will discourage those transfers that will be based on payment considerations instead of on a clinical basis. Generally, if a LTCH readmits more than 5 percent of its Medicare patients who are discharged to an onsite SNF, IRF, or psychiatric facility, or to an onsite acute care hospital, only one LTC–DRG payment will be made to the LTCH for discharges and readmittances during the LTCH's cost reporting period. Therefore, payment for the entire stay will be paid either as one full LTC–DRG payment or a short-stay outlier, depending on the duration of the entire LTCH stay.

In applying the 5-percent threshold, we will apply one threshold for discharges and readmittances with a co-located acute care hospital, consistent with the policy that has been in place under § 413.40(a)(3) for acute care hospitals and excluded hospitals described above. There will also be a separate 5-percent threshold for all discharges and readmittances with co-located SNFs, IRFs, and psychiatric facilities. In the case of a LTCH that is co-located with an acute care hospital, an IRF, or a SNF, the onsite discharge and readmittance policies would apply in addition to the interrupted stay policy that we discussed in section X.E. of this preamble and at § 412.531. This means that even if a discharged LTCH patient who was readmitted to the LTCH following a stay in an acute care hospital of greater than 9 days, if the facilities share a common location and the 5-percent threshold were exceeded, the subsequent discharges from the LTCH will not represent a separate hospitalization for payment purposes, so only one LTC–DRG payment will be made.

Similarly, if the LTCH has exceeded its 5-percent threshold for all discharges to an onsite IRF, SNF, or psychiatric hospital or unit with readmittances to the LTCH, the subsequent discharges

will not be treated as a separate discharge for Medicare payment purposes, notwithstanding provisions of the interrupted stay policy with regard to lengths of stay at an IRF or a SNF (see §§ 412.531(b)(4)(ii) and (b)(4)(iii)). (As under the interrupted stay policy, payment to an acute care hospital under the acute care hospital inpatient prospective payment system, to an IRF under the IRF prospective payment system, and to a SNF under the SNF prospective payment system, will not be affected. Payments to the psychiatric facility also will not be affected.) We are aware that situations could arise where, under sound clinical judgment, a patient who no longer required LTCH–level of care could be discharged to a SNF and then experience a setback necessitating rehospitalization. However, it is likely that, in such a scenario, in most cases the patient will be subsequently admitted to an acute care hospital rather than readmitted to the LTCH located within the acute care hospital. In addition, as we stated in the proposed rule, if the patient is being treated by a LTCH that also specializes in treating psychiatric or rehabilitation patients, it is unlikely that the patient who, for some medical reason, needed to be transferred to an onsite psychiatric or rehabilitation hospital or unit, will need to be readmitted to the LTCH. We believe that the 5-percent thresholds for discharges to onsite acute care hospitals and for discharges to onsite IRFs, SNFs, and psychiatric facilities followed by readmission to the LTCH provide adequate flexibility for those rare circumstances where such actions would be clinically preferable.

We continue to believe that the combination of a discharge-based payment system that inherently contains financial incentives for shifting patients to another site of care and the close proximity of other sites of care such as other onsite hospitals-within-hospitals, satellites, and distinct-part SNFs, necessitates this type of policy. We will monitor such discharges and analyze data and compare practice patterns before and after the implementation of the LTCH prospective payment system and, if warranted, may consider extending it to offsite providers.

Comment: Several commenters urged us to postpone implementation of this policy pending the collection of data or a formal study confirming that patient-shifting abuses among co-located providers are actually occurring.

Response: As we note in section X.I. of this final rule, we will be developing a monitoring system that would, among other things, assist us in evaluating the impact of the LTCH prospective payment system on patient care patterns among Medicare providers. We are sufficiently concerned about the growth in the number of co-located providers and the inappropriate shifting of patients to co-located providers. Therefore, we disagree with commenters that our onsite discharges and readmittances policy should be postponed. As noted above, we have designed this policy in order to discourage patient-shifting for other than clinical purposes. In addition, our policy for onsite discharges and readmittances is consistent with the policy originally described in the July 30, 1999 acute care hospital inpatient prospective payment system final rule (64 FR 41535) which addressed inappropriate discharges from an excluded hospital paid under the TEFRA system, such as a LTCH, that was co-located as a hospital-within-a-hospital to a host acute care hospital, culminating in the readmission to the LTCH. In establishing this onsite policy (as well as the interrupted stay policy discussed in section X.E. of this preamble) for separately located providers, there has been no attempt to discourage the transfer of a Medicare patient at a LTCH to another onsite provider for treatment not available at the LTCH or for nonhospital level care available in a SNF. However, we have established regulations regarding a patient's subsequent readmission to the LTCH immediately following the discharge from this other onsite provider, a circumstance that we believe could have less clinical justification than the initial LTCH discharge and admission to the other onsite provider. We continue to believe that the two 5-percent thresholds in this final rule for readmittances to the LTCH prior to the triggering of payment consequences for the LTCH provide sufficient flexibility for those unusual cases when such action could be clinically warranted.

Comment: Several commenters noted that the onsite discharge and transfer policy was unnecessary since the interrupted stay policy already addressed our concerns in this area. In addition, one commenter stated that readmissions to freestanding LTCHs equaled those to onsite LTCHs and that an additional onsite policy imposed expensive and unnecessary recordkeeping responsibilities on providers.

Response: Notwithstanding the concerns that led us to establish our interrupted stay policy, we believe that the very nature of co-located Medicare providers provides an even stronger incentive for unnecessary patient shifting and must be discouraged at the outset of establishing prospective payments for LTCHs. Unless and until a LTCH exceeds the 5-percent threshold for readmittances from the onsite acute care hospital or the 5-percent threshold for readmittances from onsite IRFs, psychiatric hospitals or units, or SNFs, Medicare payments will be based on the interrupted stay policy. This means that if a LTCH patient is admitted to one of these other providers following a LTCH hospitalization, and then readmitted to the LTCH, the length of stay at the intervening provider will determine whether the LTCH hospitalizations are paid as one or more discharges. Should one of the 5-percent thresholds be exceeded, all LTCH readmissions from either the acute care hospital or the IRF, SNF, and psychiatric facility combined for that cost reporting year will be paid as one discharge, regardless of the length of stay at the intervening provider.

We wish to clarify that if, for example, the 5-percent threshold for onsite discharges and readmissions is exceeded during a particular cost reporting period between the co-located LTCH and the acute care hospital, all onsite discharges and readmittances between these two providers during that cost reporting period will be paid as one discharge, even those that occurred prior to the threshold having been exceeded. This would also be the case for onsite discharges and readmissions that exceed the combined 5-percent threshold for IRFs, SNFs, and psychiatric facilities that are co-located with a LTCH.

This policy reflects our concerns about patient transfers among co-located providers that are based on financial rather than medical considerations. As noted above, although a patient's discharge from a LTCH to another Medicare provider could represent a reasonable sequence of care, the direct admission of that patient to the LTCH should be a relatively rare occurrence. However, if over 5 percent of the total number of patients who are discharged from a LTCH during a cost reporting period are subsequently directly readmitted from a co-located provider, we believe that such behavior signifies a pattern of inappropriate patient-shifting among onsite Medicare providers and, therefore, we will treat all of the patients in that site of care group who are discharged and readmitted as if they are only one discharge and make only one LTC–DRG payment for those discharges.

We do not believe that the onsite policy (or the interrupted stay policy as it has been revised in this final rule)

imposes an additional burden on providers since the standard of care in clinical practice requires tracking a patient's recent medical history upon admission, and sound hospital management requires ongoing evaluation of discharge and readmittance patterns.

Comment: Several commenters urged us to support, with research, any extension of the onsite policy to Medicare providers that are not co-located with LTCHs.

Response: Our monitoring of all LTCH discharges and readmittances as we implement the LTCH prospective payment system will yield data that will enable us to determine whether extension of this policy is warranted.

Comment: One commenter pointed to the distinction between co-located and co-owned hospitals. Two commenters sought to clarify what was meant by the category of ''co-located'' or ''onsite'' providers. Another commenter suggested that we apply the onsite policy with regard to SNFs only to those SNFs that are co-located in the same building.

Response: There is clearly a distinction between the co-location and co-ownership of Medicare providers, although some hospitals and units are both co-located and owned by the same corporate entity. Governing regulations at § 412.22(e) and (f) for hospitals-within-hospitals and § 412.22(h) and (i) for satellite facilities, and at § 412.25 for satellite units place no restriction on hospital or unit ownership. As we monitor the implementation of the LTCH prospective payment system, we will be noting the impact of ownership and location patterns, among others, in our evaluation of existing payment policy.

We are defining ''co-located'' and ''onsite'' for purposes of the policy established under § 412.532, in accordance with existing definitions for hospitals-within-hospitals and satellite facilities. Under § 412.22(e), hospitals-within-hospitals are defined as ''* * * hospital that occupies space in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital * * *'' Satellite facilities are defined in § 412.22(h) as ''* * * a part of a hospital that provides inpatient services in a building that is also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital.'' The definition of ''campus'' is set forth in § 413.65(a)(2). In this final rule, we have revised § 412.532 to specifically reference these definitions. We do not see any basis for us to change these definitions only for SNFs and, therefore, we will be categorizing onsite SNFs by the same standards as that used for other Medicare providers.

Comment: Two commenters expressed concern that, in promulgating a policy that discouraged onsite patient transfers, we were ignoring the fact that SNFs were a logical destination for LTCH patients upon completion of their course of treatment. These commenters believed that we should not establish payment disincentives for a LTCH that discharges a patient to a co-located SNF.

Response: We agree with the commenters that, in some instances, a patient's placement in a SNF following hospitalization in a LTCH is a reasonable sequence of care. Our onsite discharge and readmission policy does not challenge the initial discharge from the LTCH or admission to the SNF, but rather the subsequent readmission to the LTCH directly from the onsite SNF. We do not believe that our onsite transfer policy discourages appropriate onsite patient transfers. Under the LTCH prospective payment system, if, during a cost reporting period, a LTCH readmits more than 5 percent of its total number of Medicare patients from an onsite or co-located SNF, IRF, or psychiatric hospital or unit or readmits more than 5 percent of its patients from an onsite acute care hospital (in both situations, generating a second admission to the LTCH for that patient), the Medicare program will pay the LTCH for only one discharge in such cases for all patient discharges and readmittances from that provider or group of providers during that cost reporting period. The principal goal of our onsite discharge and readmission policy is to discourage patient-shifting from one Medicare site of care to another so that Medicare will pay only once for a particular episode of illness.

Existing ownership regulations do not guard against the potential gaming of the Medicare system in this way by a corporate entity owning both co-located providers (as well as an onsite acute care hospital, an IRF, or a psychiatric hospital or unit). Therefore, our policies under the LTCH prospective payment system have been designed to discourage financially motivated movement of patients among onsite Medicare providers. We also believe that the two distinct 5-percent thresholds allow for those unusual circumstances when therapeutic judgment could reasonably dictate a patient's readmission to the onsite LTCH from the other onsite provider to which the patient had been originally discharged.

Comment: One commenter, a corporation that owns IRFs, suggested that the onsite discharge and readmission policy should limit readmissions to LTCHs to 5 percent total readmissions from all co-located providers (acute care hospitals, IRFs, psychiatric facilities, and SNFs) rather than 5 percent from an onsite acute care hospital and 5 percent from an onsite IRF, SNF, and psychiatric facility combined.

Response: We believe that the 2 distinct 5-percent onsite discharge and readmission thresholds are based on a realistic understanding of current treatment patterns at LTCHs and provide adequate flexibility for clinical decisionmaking. When we were designing the onsite discharge and readmission policy, we took into account research by Urban that detailed sources and destinations of LTCH patients. As we noted in our discussion of the universe of LTCHs in section V.C. of this final rule, most LTCH patients who are transferred to other sites of care go to acute care hospitals. Therefore, at one end of the spectrum were patients who required further acute care, and at the other end, patients who no longer required LTCH-level care. Our two 5-percent threshold policies recognize that there are two distinct groups of patient groups being discharged from LTCHs: (1) Those requiring more intensive, acute hospital care; and (2) those whose medical conditions have stabilized or improved so that they can receive care at an IRF, a psychiatric facility or to a SNF.

We believe that it is appropriate that acute care hospitals have a separate 5-percent threshold, and since fewer patients go to SNFs, IRFs, and psychiatric facilities, a collective 5-percent threshold for those facilities is adequate.

Comment: Two commenters questioned how we would actually implement the onsite discharge and readmission policy from a systems perspective.

Response: In order to practically implement payments under the onsite discharge and readmission policy, fiscal intermediaries will reconcile Medicare payments and discharge data received by LTCHs during the course of that cost reporting year, at the close of each cost reporting period. We will issue program memoranda detailing instructions for fiscal intermediaries and providers regarding billing, data collection, and systems operations following the publication of this final rule.

Comment: One commenter supported reducing the incentives to transfer patients inappropriately, but also

expressed concern that our onsite policy may not take into account the clinical needs of Medicare patients and could discourage even appropriate transfers. The commenter further suggested that Medicare's QIO should monitor patient care at LTCHs in general and onsite readmissions in particular. Another commenter believed that our onsite policy constrained clinical decisionmaking and restricted a Medicare beneficiary's choice of provider.

Response: We appreciate the commenter's support for our policy efforts regarding inappropriate transfer of patients among onsite Medicare providers. While we agree that the decision to move a patient from one care setting to another should be made on purely clinical grounds, we remain concerned about discharges based on financial concerns, particularly among Medicare providers that are both co-located and owned by the same parent corporation. In this final rule, we are establishing a payment policy for LTCHs based on our best available data. We are not prohibiting a LTCH from serving a patient nor have we dictated where a patient should receive care. For this reason, we will retain the onsite discharge and readmission policy as we implement the LTCH prospective payment system. Regarding review by QIOs, we have established medical review requirements at § 412.508(a) in accordance with existing regulations at §§ 412.44, 412.46, and 412.48 and consistent with other established prospective payment systems policies. As noted throughout this final rule, we expect that the implementation of the LTCH prospective payment system will generate data that will allow indepth analysis and evaluation of our policies. To that end, we have established a monitoring protocol with our Office of Research, Development, and Information.

H. Additional Issues for Onsite Facilities

1. Issues Proposed for Discussion in the March 22, 2002 Proposed Rule (67 FR 13416)

As we prepare to implement a prospective payment system for LTCHs, we are reevaluating certain existing policies for hospitals-within-hospitals and satellite facilities that were established under the TEFRA payment system for excluded hospitals.

Existing regulations at § 412.22(e) specify exclusion criteria based on ownership and control for hospitals-within-hospitals and their host hospitals (59 FR 45330, September 1, 1994). We are concerned about possible manipulation of Medicare payments by a single entity that owns or controls an acute care hospital and a co-located LTCH. We believe that such a situation could lead to premature patient discharges from the acute care hospital to the co-located LTCH, resulting in two Medicare payments to the controlling entity for one episode of care. Since LTCHs are generally capable of providing a wide range of medical treatment, we are concerned about the following scenario: the costs of treating an acute care hospital patient exceed the payment that the hospital would receive for that specific DRG and the acute care hospital ''discharges'' the patient who still requires treatment, for admission to an onsite LTCH. Under this circumstance, the LTCH would, in fact, function as an excluded unit of an acute care hospital, a situation inconsistent with section 1886(d)(1)(B) of the Act, which allows excluded rehabilitation and psychiatric units in acute care hospitals but not long-term care units. Through the interrupted stay and onsite discharge and readmittance policies set forth in sections X.E. and X.G., respectively, of this final rule, which limit potential inappropriate Medicare payments, we believe that we have addressed some of the concerns that originally led us to establish the rules in § 412.22(e).

In the March 22, 2002 proposed rule, we solicited comments on possible changes to our payment policy regarding ownership and control for hospitals-within-hospitals.

Comment: Two commenters supported maintaining the existing regulations governing hospitals-within-hospitals and further endorsed the proposed interrupted stay and co-located discharge and readmittance provisions. Several commenters encouraged stricter enforcement of our present policy on control and ownership. The commenters believed that, even though our regulations require hospital-within-hospitals to have separate governing bodies, chief medical officers, separate medical staffs and chief executive officer from host hospitals (§ 412.23(e)(1) through (e)(4)) and require basic hospital functions to be separated according to the fulfillment of one of three criteria at § 412.23(e)(5), some hospitals-within-hospitals and their host hospitals have managed to circumvent the regulations. One of these commenters noted that, in such situations, the long-term care hospitals-within-hospitals were, in effect, functioning as LTCH units.

Response: The expressed intent of existing separateness criteria at § 412.22(e), first presented in the September 1, 1994 acute care hospital inpatient prospective payment system final rule (59 FR 45390 and 45396), was to disallow the formation of a single hospital facility that included an acute care hospital paid under the prospective payment system and what would effectively be a LTCH unit that would be paid under the TEFRA payment system. We believe that formation of such a facility was contrary to the statutory intent of section 1886(d)(1)(B) of the Act. The existing regulations were implemented to prohibit such an arrangement. As we implement the prospective payment system for LTCHs, we remain extremely concerned about rapid growth in long-term care hospitals-within-hospitals and will be collecting data on the relationship among host hospitals, hospitals-within-hospitals, and parent corporations in order to determine the need for additional regulation or monitoring.

Comment: Ten commenters urged us to strengthen existing separateness criteria in the regulation. Among the policies suggested were disallowing the establishing of separate corporations with common ownership and funding to operate a hospital-within-hospital by parent or controlling companies or host hospitals; precluding the provision of goods and services not consistent with ''fair market value''; and the guaranteeing of the long-term care hospital-within-hospital's loans or debts by the host hospital. Commenters pointed to loopholes in existing regulations that allow corporations to evade our intent. One hospital association urged us to disallow a parent company of the host hospital to establish a separate corporation that would control both the host hospital and finance a hospital-within-a-hospital. Another commenter proposed a percentage ceiling on patients that a long-term care hospital-within-a-hospital could admit from the host hospital, a strict definition of ''direct'' and ''indirect'' control for purposes of limiting common corporate ownership. One commenter noted that, although the forthcoming LTCH prospective payment system onsite discharge and admission policies (section X.G. of this final rule and § 412.532) could deter LTCHs from financially benefiting from discharging patients and subsequently readmitting them, acute care hospitals could still make financially driven transfers of patients to LTCHs.

Response: We believe that existing regulations, including the existing 10-DRG postacute care transfer policy at § 412.4, are effective disincentives for acute care hospitals to transfer patients, for whom they could reasonably provide

treatment, to LTCHs. However, as noted below, we are requiring all LTCHs to inform their fiscal intermediary and their CMS Regional Office if they are co-located Medicare providers and will be collecting data on the corporate relationships between these providers. We plan to revise our policies and take action as necessary if our research reveals circumvention of CMS policy goals.

Comment: One commenter suggested that an additional criteria to prevent abuse by hospitals-within-hospitals would be to strengthen the regulations about disclosure of other alternatives as part of hospital discharge planning, one of the Medicare conditions of participation for hospitals, as described in § 482.43.

Response: Discharge planning is one of our basic hospital health and safety requirements. Under § 482.43(b)(6), a hospital is currently required to discuss the results of the discharge planning evaluation with the patient or individual acting on the patient's behalf. In addition, §§ 482.43(c)(4) and (c)(5) already require the hospital to reassess the patient's discharge plan if there are factors that may affect continuing care needs or the appropriateness of the discharge plan and to counsel and prepare patients and family members for posthospital care. Accordingly, based on these existing safeguards, we do not believe that there is a need to modify § 482.43.

Comment: Five commenters urged us to refrain from issuing any additional regulations affecting hospitals-within-hospitals, particularly relating to ownership of a hospital-within-a-hospital. Two commenters recommended the elimination of all LTCH ownership rules, and one commenter suggested that we consider ''leveling the long-term acute care hospital playing field''. The commenter believed that such action would allow true competition and remove any unnecessary barrier to general acute care hospitals entering into the long-term acute care hospital business.

Response: We believe it essential to establish regulations discouraging the transfer of Medicare patients from one provider to another for any reason other than for clear clinical benefits of the patient. However, without the separate ownership and control requirements at § 412.22(e), we believe that LTCHs located within a host acute care hospital could function as LTCH units. This is a prospect that is inconsistent with the purpose and scheme of section 1886(d)(1)(B) of the Act, which provides for the exclusion of psychiatric and rehabilitation units, but not for the exclusion of LTCH units. The acute care hospital inpatient prospective payment system was originally based on the principle of determining an average cost per discharge, and the average was determined by including all discharges, short and long stays. For an acute care hospital to move its patients to a ''LTC unit'' rather than treating the patient for the entire spell of illness would allow the hospital to have had the benefit of a payment for that patient that had been based on including long-stay patients in calculating the average cost per discharge, while in actuality no longer treating those longer stay types of patients.

In our final rule for the acute care hospital inpatient prospective payment system (September 1, 1994 **Federal Register** (59 FR 45389)), we noted that we intended for the hospital-within-hospital policy to allow ''adequate flexibility for legitimate networking and sharing of services * * *'' and we believe that existing policies can contribute to efficiency, convenience and clinical benefits. Whether or not we will promulgate additional ownership and control regulations for hospitals-within-hospitals will be based on the results of our collection and analysis of data that we will be gathering for monitoring and compliance purposes.

Comment: Several commenters urged us to publish a proposed rule to provide the opportunity for public comments for any proposed changes to the regulations governing hospitals-within-hospitals.

Response: At this point, we do not have specific plans to revise any existing policies on hospitals-within-hospitals. As we implement the LTCH prospective payment system, we will be monitoring hospitals-within-hospitals and satellite facilities for, among other behaviors, compliance with existing regulations, growth in numbers, and transfer patterns. In order to facilitate this monitoring and compliance, we are requiring that LTCHs notify their fiscal intermediaries and their CMS regional office about their co-location with any other Medicare providers by December 1, 2002 (within 60 days following the initial effective date of the LTCH prospective payment system).

Therefore, we are revising the regulations at §§ 412.22(e) and 412.22(h) to incorporate this required notification. If, as a consequence of these monitoring activities, we determine that we need to revisit existing regulations dealing with ownership and control of hospitals-within-hospitals, we will follow the notice and comment rulemaking process.

Comment: One commenter, a LTCH that is co-located, as a hospital-within-a-hospital with a larger tertiary care center that is an acute care hospital, with both facilities having a common owner, asserted that the single ownership of both hospitals actually affords significant benefits to patients in the LTCH from the standpoint of clinical care as well as medical efficiency and management.

Response: We agree with the commenter's assertion that the location of a long-term care hospital-within-a-hospital co-located within a host acute care hospital has a number of advantages from the standpoint of patient convenience and management, provided the requirements set forth in § 412.22(e) are satisfied and the patients in each of the co-located hospitals receive a full episode of care in that hospital.

Comment: One commenter suggested that the prospective payment system for LTCHs take into account that freestanding LTCHs have considerably higher infrastructure costs than LTCHs that exist as hospitals-within-hospitals.

Response: The Urban Institute's research based on FY 1997 cost reports from LTCHs revealed that there is no significant difference between the payment-to-cost ratios for LTCHs that exist as hospitals-within-hospitals and freestanding LTCHs. We expect to update these data and, therefore, as noted above, we are revising the regulations at §§ 412.22(e) and (h) to require LTCHs to notify their fiscal intermediaries and their CMS regional office of their co-location with any other Medicare providers within 60 days of their first cost reporting period that begins on or after October 1, 2002. These data will enable us to evaluate possible cost differentials between LTCHs that are co-located and those that are freestanding. As we analyze the data, we will determine if and what payment system adjustments would be appropriate to propose.

Comment: One commenter questioned whether we were soliciting comments on the possibility of allowing LTCHs to house units of other excluded hospital categories, such as rehabilitation or psychiatric units.

Response: Under § 412.25(a)(1)(ii), a unit excluded from the acute care hospital inpatient prospective payment system is precluded from locating in a facility that is excluded from the acute care hospital inpatient prospective payment system, such as a LTCH. We have no plans to revise this policy.

We also solicited comments on our policy regarding LTCHs that have established satellite facilities. In § 412.22(h)(1), we define a satellite as ''a part of a hospital that provides inpatient

services in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital.'' Satellite arrangements exist when an existing hospital that is excluded from the acute care hospital inpatient prospective payment system and that is either a freestanding hospital or a hospital-within-a-hospital under § 412.22(e) shares space in a building or on a campus occupied by another hospital in order to establish an additional location for the excluded hospital. The July 30, 1999 acute care hospital inpatient prospective payment system final rule (64 FR 41532–41534) includes a detailed discussion of our policies regarding Medicare payments for satellite facilities of hospitals excluded from the acute care hospital inpatient prospective payment system. In the March 22, 2002 proposed rule, we indicated that we would consider the possibility of revisiting the policies we established for these satellites. In accordance with section 1886(b) of the Act, as amended by sections 4414 and 4416 of Public Law 105–33, we established two different target limits on payments to excluded hospitals, depending upon when the facilities were established. The target amount limit for excluded hospitals or units established before October 1, 1997 was set at the 75th percentile of the target amounts of similarly classified hospitals, as specified in § 413.40(c)(4)(iii), for cost reporting periods ending during FY 1996, as updated to the applicable cost reporting period. For excluded hospitals and units established on or after October 1, 1997, under section 4416 of Public Law 105–33, the payment amount for the hospital's first two 12-month cost reporting periods, as specified at § 413.40(f)(2)(ii), may not exceed 110 percent of the national median of target amounts of similarly classified hospitals for cost reporting periods ending during FY 1996, updated to the first cost reporting period in which the hospital receives payment.

Because we were concerned that a number of pre-1997 excluded hospitals, governed by § 413.40(c)(4)(iii), would seek to create satellite arrangements in order to avoid the effect of the lower payment caps that would apply to new hospitals under § 413.40(f)(2)(ii), we established rules regarding the exclusion of and payments to satellites of existing facilities. If the number of beds in the hospital or unit (including both the base hospital or unit and the satellite location) exceeds the number of State-licensed and Medicare-certified beds in the hospital or unit on the last day of the hospital's or unit's last cost reporting period beginning before October 1, 1997, the facility would be paid under the acute care hospital inpatient DRG system. Therefore, while an excluded hospital or unit could ''transfer'' bed capacity from a base facility to a satellite, if it increased total bed capacity beyond the level it had in the most recent cost reporting period before October 1, 1997 (see 64 FR 41532–41533, July 30, 1999), the hospital will not be paid as a hospital excluded from the acute care hospital inpatient prospective payment system. However, no similar limitation was imposed with respect to the number of total beds in excluded hospitals and units and satellite facilities of those excluded hospitals and units established after October 1, 1997, since those excluded hospitals and units were already subject to the lower payment limits of section 4416 of Public Law 105–33, and would, therefore, not benefit from the higher cap by creating a satellite facility.

Section 123 of Public Law 106–113 confers broad authority on the Secretary regarding the implementation of the prospective payment system for LTCHs, and as described in section X.N. of this final rule, we will transition the LTCH prospective payment system over 5 years. During this period, payments to LTCHs will gradually change from a blend of hospital-specific reasonable cost-based payments and the Federal rate to a fully 100 percent Federal per-discharge LTC–DRG-based prospective payment system. In addition, IRFs also will be transitioned to 100 percent fully Federal prospective payment system payment starting with cost reporting periods beginning during FY 2003. In the proposed rule, we stated that we would consider whether to propose elimination of the bed-number criteria in § 412.22(h)(2)(i) for pre-1997 hospitals, once the applicable prospective payment system is fully phased in. All LTCHs would be paid based on 100 percent of the LTCH Federal rate by FY 2007 and the payment rates established under the TEFRA system at that time will no longer exist for this class of hospitals. In addition, we noted that, starting with cost reporting periods that begin during FY 2003, payment to IRFs are no longer cost based. We also noted that any policy change for lifting the bed-number criteria for hospitals under the LTCH or IRF prospective payment systems that we consider to propose would not apply while hospitals continue to be paid under the TEFRA system. Therefore, in the proposed rule, we stated that during the 5-year phasein period, the policies in § 412.22(h)(2)(i) would continue to apply to LTCH satellites facilities.

Comment: One commenter endorsed the policy that we may limit criterion for LTCHs with satellites once the LTCH prospective payment system is fully phased in by FY 2007. Under that existing policy, we limit a LTCH with a satellite to the number of beds that does not exceed the total number of beds the hospital was licensed to have on the last day of the hospital's last cost reporting period beginning before October 1, 1997.

Ten other commenters urged us to adopt a policy eliminating the bed-number restrictions for satellites established by pre-1997 LTCHs as soon as a LTCH elects to be paid based on 100 percent of the standard Federal rate. The commenters recommended not waiting to eliminate the bed limit until FY 2007. The commenters explained that the rationale for the policies regarding bed limits for LTCHs with satellites was established subsequent to the enactment of the BBA in 1997, which set different target amount limits for each group. The commenters believed the policy should be obsolete once a LTCH is paid 100 percent under the fully Federal rate. Two of these commenters, while agreeing that we should adopt regulations eliminating the bed limits for pre-1997 LTCHs that elect to be paid based on 100 percent of the Federal rate, suggested limiting any proposal to those situations when the LTCH's TEFRA payment rate is lower than the most recent cap under § 413.40(f)(2)(ii).

Response: We agree that it may be appropriate to propose an elimination of the bed restriction prior to all hospitals transition to the LTCH prospective payment system. Although, in the proposed rule, we indicated that we would consider proposing a change to the existing bed-limit criterion in § 412.22(h)(2)(i) for pre-1997 LTCHs once the LTCH prospective payment system was fully phased in, we agree with the argument presented by the commenters that it may be appropriate to propose dispensing with bed-number restrictions for those pre-1997 LTCHs that elect to be paid under 100 percent of the Federal rate, at the start of the cost reporting period when this election is made. The rationale for the bed limit provision at § 412.22(h)(2)(i) was the potential for gaming by creating a satellite location with a higher TEFRA target amount cap, where in reality the satellite would have been a separately certified LTCH but would have been subject to the lower cap on payments.

Once the hospital is paid under 100 percent of the prospective payment system rate, there is no longer a reason for the hospital to create a new hospital as a satellite since such a creation would not affect the hospital's prospective payment system payment. Accordingly, we will address a change in the policy concerning bed limits in the next update of the LTCH prospective payment system. Since the bed-restriction provisions on LTCHs with satellites were applicable under the TEFRA payment system, those LTCHs that are transitioning into full prospective payment and that, therefore, are still receiving a percentage of their payments under TEFRA rules, we believe, should continue to be subject to these restrictions during the phasein.

Finally, we do not believe that it may be appropriate to propose the more restrictive option suggested by the two commenters. Allowing only those hospitals with TEFRA target amounts that are below the BBA cap or the target amount to exceed the limit is not consistent with our original basis for the limit. Once a hospital is not subject to the BBA cap on the target amount, the limit should be lifted with no consideration of the comparison of the hospital's cost to its target amount.

Comment: Several commenters urged us to consider dispensing with the satellite bed-number restrictions for IRFs once the IRF prospective payment system is fully phased in for cost reporting periods beginning during FY 2003.

Response: We appreciate the comments on this issue. This area is currently under our review and may be addressed in the future when changes to the IRF prospective payment system are addressed.

Comment: One commenter suggested that, under the LTCH prospective payment system, satellite facilities should not have to independently comply with the 25-day average length of stay requirements separate from the parent LTCH.

Response: We disagree with the commenter's suggestion and are not revising the regulations that require a satellite facility of a LTCH to independently meet the average 25-day length of stay requirement under § 412.22(h)(2)(ii)(D). In establishing regulations for satellite facilities of excluded hospitals in the July 30, 1999 acute care hospital inpatient prospective payment system final rule (64 FR 41534), we clarified the need to establish financial and administrative linkage between the satellite facility and the parent excluded hospital, and we required the satellite facility to comply independently with selected statutory requirements for qualifying into the category of excluded provider of the parent hospital. We were concerned that existing hospitals that were excluded from the prospective payment system were establishing new hospitals under the guise of satellite facilities in order to circumvent several Medicare payment provisions. We also wanted to safeguard against the possibility of these satellites of excluded hospitals actually functioning as a part of an acute care hospital for the financial benefit of both facilities without any consequential clinical benefit to patients who could have reasonably been treated at an acute care hospital.

We continue to believe it is essential that the satellite facility of such an excluded hospital retain the identity of the type of excluded hospital of which it is a part by separately complying with such requirements, thereby ensuring that patients hospitalized at the satellite facility would receive the appropriate specialized care for which Medicare is paying. In the case of a LTCH, we require that a satellite facility meet the 25-day average length of stay requirement independently, since we do not believe patients not requiring long-term hospital-level care should be admitted to either the LTCH or its satellite and we are concerned that, without requiring separate compliance, shorter lengths of stay at either the LTCH or its satellite could be balanced by longer stays at the other. Therefore, we will continue to separately calculate the length of stay for patients at LTCH satellite facilities to ensure that the satellite facility is actually a LTCH that warrants payments under the LTCH prospective payment system.

Comment: One commenter urged us to limit the growth of LTCH satellites by prohibiting additional LTCH satellites from being established after October 1, 2002.

Response: We do not believe that the action suggested by the commenter is warranted at this time.

2. Criteria for Exclusion of Satellite Facilities From the Hospital Inpatient Prospective Payment System Published in the August 1, 2002 Acute Care Hospital Final Rule (67 FR 49982)

In the final rule for the acute care hospital inpatient prospective payment system, published on August 1, 2002 (67 FR 49982), we included a discussion of policy changes for satellites of prospective payment system-excluded hospitals and units and revised § 412.22(h) (67 FR 50105). Effective for cost reporting periods beginning on or after October 1, 2002, a hospital or unit that has a satellite facility must meet the following criteria in order to be excluded from the acute care hospital inpatient prospective payment system for any period: (1) It is not under the control of the governing body or the chief executive officer of the hospital in which it is located; and (2) it furnishes inpatient care through the use of medical personnel who are not under the control of the medical staff or the chief medical officer of the hospital in which it is located. We further indicated that a number of the criteria that apply to hospitals-within-hospitals would not be applicable to satellite facilities. One example is the requirement that the cost of services that the hospital-within-a-hospital receives from the ''host'' hospital is not more than 15 percent of the hospital's inpatient operating costs would not be an appropriate criterion. This criterion would not be appropriate because the test would not only look at the costs incurred by the satellite facility but also at the costs incurred by the entire hospital, including both the satellite facility and the main hospital.

We remain concerned that a significant potential exists for co-located providers to circumvent Medicare policy. For example, an excluded hospital would not be prohibited, under current rules, from setting up one or more satellites that could be much larger than the main provider hospital, but under the rules published on August 1, 2002, do not need to meet the separateness requirements for hospitals-within-hospitals in § 412.22(e)(5). In this scenario, a small main provider (having, for example, 50 beds), which itself could be co-located with an acute hospital as a hospital-within-a-hospital, could establish a large satellite (having, for example, 200 beds). Although this activity would be equivalent to the creation of a hospital-within-a-hospital, the hospital would, under current rules, only be required to comply with the satellite regulations at § 412.22(h), not the additional requirements for hospitals-within-hospitals (see § 412.22(e)(5)). We believe such a result would defeat the purpose of the hospital-within-a-hospital and satellite rules, by leading to the creation of facilities which are not sufficiently independent of the hospitals in which they are located to qualify for separate payment.

As noted in the above discussion of hospitals-within-hospitals and satellites under the LTCH prospective payment system, we will be monitoring all aspects of onsite Medicare providers. If we see potentially abusive configurations being developed, we may consider proposing further regulations

that would provide effective safeguards against such abuse, such as requiring any satellite facility of a prospective payment system-excluded hospital that shares a building or a campus with another Medicare provider to individually meet separateness requirements substantially the same as those in § 412.22(e)(5).

I. Monitoring System

In the March 22, 2002 proposed rule, we proposed various policies that we believed would provide equitable payment for stays that reflect less than the full course of treatment and reduce the incentives for inappropriate admissions, transfers, or premature discharges of patients that are present in a discharge-based prospective payment system. We also proposed to collect and interpret data on changes in average lengths of stay under the prospective payment system for specific LTC–DRGs and the impact of these changes on the Medicare program.

We are planning to develop a monitoring system that will assist us in evaluating the LTCH prospective payment system. If our data indicate that changes might be warranted, we may revisit these issues and consider proposing revisions to these policies in the future.

Comment: One commenter stated that, in designing the LTCH prospective payment system, we compared current costs to payments under the new prospective payment system. The commenter indicated that, since these costs may be higher than necessary, it is possible that additional payments for care provided in LTCHs may not be an appropriate expenditure of Medicare funds. The commenter urged us to gather data on the following basic issues:

- Where patients who need acute long-term care are treated in areas where there are no LTCHs;
- How costs and outcomes compare for similar patients in long-term care hospitals and other settings in areas where LTCHs do not exists;
- How costs compare for hospitals with and without onsite LTCHs;
- How costs compare for onsite LTCHs and freestanding LTCHs; and
- How the presence or absence of LTCHS affects transfers to acute care hospitals and other post-acute care settings.

Response: We agree with the commenter that these areas of study are essential to our ongoing monitoring and evaluation activities for implementation of the LTCH prospective payment system. We note that the establishment of the prospective payment system for LTCHs is required by statute. The statute specifically requires that the system be budget neutral to payments under the current TEFRA system. However, as we stated earlier, we intend to develop a monitoring system that will assist us in evaluating the LTCH prospective payment system. If our data indicate that changes are warranted, we may revisit these issues and, consistent with statutory requirements, consider revising these policies in the future.

Given that the only unique requirement that distinguishes a LTCH from other hospitals is an average length of stay of greater than 25 days, we continue to be concerned about the extent to which LTCH services and patients differ from those services and patients treated in other Medicare covered settings (for example, SNFs and IRFs) and how the LTCH prospective payment system will affect the access, quality, and costs across the health care continuum. Thus, we will monitor trends in the supply and utilization of LTCHs and Medicare's costs in LTCH and relative to other Medicare providers. For example, we may conduct medical record reviews of Medicare patients to monitor changes in service use (for example, ventilator use) over a LTCH episode of care and to assess patterns in the average length of stay at the facility level. We will consider future changes to LTCH coverage and payment policy based upon the results of such analyses.

J. Payment Adjustments

As indicated earlier, the Secretary generally has broad authority under section 123 of Public Law 106–113 in developing the prospective payment system for LTCHs. Thus, the Secretary has discretion to determine whether (and how) to make adjustments to the prospective payments to LTCHs. Section 307(b) of Public Law 106–554 directs the Secretary to ''examine'' appropriate adjustments to the prospective payments to LTCHs, including certain specific adjustments, but under that section the Secretary continues to have discretion as to whether to provide for adjustments.

In determining whether to include specific payment adjustments under the prospective payment system for LTCHs, we conducted extensive regression analyses of the relationship between LTCH costs (including both operating and capital-related costs per case) and several factors that may affect costs such as the percent of Medicaid patients treated, the percent of Supplemental Security Income (SSI) patients treated, geographic location, and medical education programs. The appropriateness of potential payment adjustments is based on both cost effects estimated by regression analysis and other factors, including simulated payments that we discuss later in this section of the preamble.

Our analyses in the proposed rule were based on data from 222 LTCHs for which both costs from the cost reports in HCRIS and case-mix data from the MedPAR file were available. For this final rule, we collected costs from the cost reports and case-mix data from the MedPAR file on 198 LTCHs. We excluded LTCHs that are all-inclusive providers and providers reimbursed in accordance with demonstration projects (section X.K.2.a. of this preamble). We estimated costs for each case by multiplying hospital-specific cost-to-charge ratios by the LTCH's charges for that case. Cost-to-charge ratios were determined by obtaining costs from FY 1998 or FY 1999 cost report data, or both, as available in the HCRIS minimum data set, and charges from the Medicare claims data available in the MedPAR file. Because the universe of LTCHs has grown relatively rapidly over the last several years, in order to maximize the number of LTCHs in the database, we used the most recent cost report data available for each LTCH. If we had both FY 1998 and FY 1999 cost report data, we used the most complete cost reporting period (that is, the cost reporting period with the greater number of months). If we used FY 1998 cost report data because FY 1999 data were either unavailable (due to the time lag in cost report settlement) or incomplete, we updated the FY 1998 data for inflation using the FY 1999 excluded hospital market basket increase (2.4 percent) as published in the July 31, 1998 acute care hospital inpatient prospective payment system FY 1999 final rule (63 FR 40954). As indicated in Appendix A of this final rule, we are using the excluded hospital market basket with a capital component to update payment rates. The excluded hospital market basket is currently used to update LTCHs' target amounts for inflation under the TEFRA system. We believe that the use of the excluded hospital market basket to update LTCHs' costs for inflation is appropriate because the excluded hospital market basket measures price increases of the services furnished by excluded hospitals, including LTCHs. We believe that there is insufficient data to develop a market basket based only on LTCH costs at this time.

As we explained in the proposed rule, in computing hospital-specific cost-to-charge ratios, we matched the costs for which we had the most recent and

complete cost reporting period data to the claims in the MedPAR file for each month in that cost reporting period.

Comment: One commenter believed that a rural adjustment is an important component of the LTCH prospective payment system; the IRF prospective payment system provides for a 19.4 percent payment adjustment for rural hospitals and units. In the absence of a rural adjustment, the commenter believed that those LTCHs located in rural areas will be placed at a competitive disadvantage in the purchasing of hospital services and medical supplies since they share the labor market with rehabilitation hospitals.

Response: As we explained in the proposed rule, while our data did identify 14 rural LTCHs, the analysis of the data associated with these rural providers did not support a payment adjustment for LTCHs located in rural areas.

Therefore, under the proposed LTCH prospective payment system, all LTCHs would be treated the same for the purposes of payment, regardless of location. With regard to the 14 rural LTCHs, in the proposed rule, we compared the hospital's projected payments to both their projected costs and to what TEFRA payments would be and determined a proposed LTCH prospective payment system payment-to-cost ratio of 1.1337 and a proposed new LTCH prospective payment system payment-to-current TEFRA payment ratio of 1.2327 for those hospitals. These ratios showed that the prospective payments under the proposed LTCH prospective payment system for rural hospitals were expected to exceed their costs by 13.37 percent and exceed their payments under the TEFRA system by 23.27 percent. In this final rule, based on updated data and including the policy changes discussed above, rural hospitals are still projected to have positive ratios; for example, a new LTCH prospective payment system payment-to-current TEFRA payment ratio of 1.0796 and a new LTCH prospective payment system payment-to-cost ratio of 1.0333 (based on estimated TEFRA payments and case-mix data that were available from the MedPAR file for 194 LTCHs). Therefore, we believe the data continue to support our position that a rural location adjustment is not warranted at this time. We also point out that this was not the case for rehabilitation facilities. The regression data for IRFs showed a basis for recognizing additional costs at rural locations. Thus, under the IRF prospective payment system, there was a need for some type of adjustment for rural location.

Comment: One commenter supported our assessment that because of the low number of rural LTCHs (5 percent of the total universe) and the modest volume of patients treated in these facilities, there should not be a rural location adjustment.

Response: We appreciate the commenter's support of our position on this issue. However, we note that our policy was not based on the number of rural LTCHs or the volume of patients. Rather, the policy decision not to include a rural adjustment in the LTCH prospective payment system is based on a regression analysis of data from rural hospitals, which did not show that an adjustment is appropriate.

Comment: One commenter asked whether the cost-to-charge ratios that appear in the ratesetting file on the CMS website were adjusted for inflation.

Response: We did not apply an inflation factor to the cost-to-charge ratios since both costs and charges were taken from the same year's data (for example, FY 1999). Since we would use the same inflation factor for both the numerator (costs) and denominator (charges), the resulting ratio with the inflation factor applied would be equal to the ratio without the application of the inflation factor. Therefore, an inflation factor is unnecessary. In determining the cost-to-charge ratios, costs were taken directly from the MedPAR file.

Comment: One commenter asked why cost-to-charge ratios greater than ''2'' were in the calculation of payment amounts.

Response: We believe that the cost-to-charge ratios greater than ''2'' are legitimate and, thus, we did not believe it was appropriate to exclude them.

Comment: One commenter noted that cost-to-charge ratios are defined as the ''ratio of costs to charges from total cost report data in HCRIS matching charge data from the MedPAR files,'' and asked if this meant that a ratio of costs from the cost report to charges from the MedPAR file was used to determine the cost-to-charge ratio or if this meant that the cost-to-charge ratios appearing in the cost reports were applied to charges in the MedPAR file. If the latter method was used, the commenter wanted to know how the cost-to-charge ratios were calculated from the cost report data.

Response: A ratio of costs from the cost report to charges from the MedPAR file was created to determine the cost-to-charge ratio. The cost-to-charge ratios were determined by dividing the average cost per case from the LTCH's most recent available cost report by the LTCH's average covered charge per case from corresponding MedPAR data for the same months as the months covered by the cost reporting period. For example, for a LTCH with a 12-month cost reporting period beginning on July 1, 1999 and ending on June 30, 2000, we used MedPAR data for claims discharged from July 1999 through June 2000 to compute its cost-to-charge ratio. The cost per case for each hospital is calculated by summing all costs and dividing by the number of corresponding cases.

Multivariate regression analysis is the standard statistical technique for examining cost variation that was used to analyze potential payment adjustments for LTCHs. We looked at two standard models—(1) a double log regression explanatory model to examine the impact of all relevant factors that might potentially affect a LTCH's cost per case; and (2) a payment model that examines the impacts of those factors that were determined to affect costs and, therefore, were used to determine payment rates. In multivariate regression, the estimated average cost per case (the dependent variable) at the LTCH can be explained or predicted by several independent variables, including the case-mix index, the wage index for the LTCH, and a vector of additional explanatory variables that may affect a LTCH's cost per case, such as a teaching program or the proportion of low-income patients. The case-mix index is the average of the LTC–DRG weights, derived by the hospital-specific relative value method, for each LTCH. Short-stay outlier cases are weighted based on the ratio of the length of stay for the short-stay case to the average length of stay for nonshort-stay cases in that LTC–DRG. We simulated payments using an estimated budget-neutral payment rate and the regression coefficients as proxies for payment system adjustments. Then we calculated payment-to-cost ratios for different classes of hospitals for specific combinations of payment policies.

We examined payment variables applicable to the hospital inpatient and IRF prospective payment systems, including the disproportionate share patient percentage, both the resident-to-average daily census ratio and the resident-to-bed ratio teaching variables, and variables that account for location in a rural or large urban area. A discussion of the major payment variables and our findings appears below.

1. Area Wage Adjustment

Section 307(b) of Public Law 106–554 requires that we examine the

appropriateness of an area wage adjustment. Such an adjustment would account for area differences in hospital wage levels and would be made by adjusting the LTCH prospective payment system payment rate by a factor that will reflect the relative hospital wage level in the geographic area of the hospital, as compared to the national average hospital wage level. In the March 22, 2002 proposed rule, we did not propose implementing an area wage adjustment for payments to LTCHs because our regression analysis indicated at that time that a wage adjustment would not increase the accuracy of payments. However, as discussed below, based on the comments we received, we have reconsidered the appropriateness of including an area wage adjustment in the LTCH prospective payment system. Under the acute care hospital inpatient prospective payment system, a wage index is applied to the labor-related share of the operating standardized amount to adjust for local cost variation. The hospital wage data are used also to make an area wage adjustment under the IRF prospective payment system, the SNF prospective payment system, the home health prospective payment system, and the outpatient hospital prospective payment system.

As we discussed in the March 22, 2002 proposed rule, we analyzed the appropriateness of an area wage adjustment for LTCHs by evaluating the labor-related share from the excluded hospital with capital market basket. (This is the same market basket that is used in the IRF prospective payment system.) Currently, under the TEFRA reasonable cost-based reimbursement system, the excluded hospital market basket is used to update the cap on LTCHs' target amounts, which are used to determine payments to LTCHs for inpatient operating costs. Since we proposed to implement a single standard Federal rate under the LTCH prospective payment system (section X.K. of this preamble), we used a market basket with a capital component. A further explanation of the excluded hospital with capital market basket can be found in Appendix A of this final rule.

The labor-related share is the relative importance of wages, fringe benefits, professional fees, postal services, labor-intensive services, and a portion of the capital share for FY 2003. We determined a labor-related share of the excluded hospital with capital market basket by first estimating the portion related to operating costs. The excluded hospital with capital market basket is based on available cost data for facilities excluded from the acute care hospital inpatient prospective payment system, including long-term care, rehabilitation, psychiatric, cancer, and children's hospitals.

In the proposed rule, we determined a labor-related share of the excluded hospital with capital market basket by first estimating the portion related to operating costs. Using the excluded hospital with capital market basket, we determined the labor-related share of operating costs to be 69.428 percent for FY 2003, which is calculated as the sum of the relative importance for wages and salaries (50.381 percent), employee benefits (11.525), professional fees (2.059), postal services (0.244), and all other labor intensive services (5.219).

The labor-related share of capital costs in the market basket needed to be considered as well. We used the portion of capital attributed to labor, which our Office of the Actuary estimated on the basis of cumulative knowledge of prospective payment systems, to be 46 percent. This was the same percentage used for both the acute care hospital inpatient capital prospective payment system and the IRF prospective payment system. In the proposed rule for FY 2003, we estimated, based on the historical knowledge of prospective payment systems, the relative importance for capital to be 7.552 percent of the excluded hospital with capital market basket. We then multiplied 46 percent by 7.552 percent to determine that the labor-related share for capital costs for FY 2003 to be 3.474 percent. We then added the 3.474 percent for capital costs to the 69.428 percent for operating costs to determine the total labor-related share based on the excluded hospital with capital market basket. Thus, in the proposed rule, when we examined an adjustment to account for area differences in hospital wage levels, we used a labor-related share of 72.902 percent for the LTCH prospective payment system.

Based on updated data, for this final rule we estimate the relative importance for capital for FY 2003 to be 7.515 percent of the excluded hospital with capital market basket. We then, for this final rule, multiplied 46 percent by 7.515 percent to determine that the labor-related share for capital costs for FY 2003 to be 3.457 percent. Accordingly, based on updated data for FY 2003, the labor-related share of the excluded hospital with capital market basket is 72.885 percent (69.428 plus 3.457).

Specifically, in the proposed rule, we examined the appropriateness of accounting for differences in area wage levels by multiplying the labor-related share of the unadjusted Federal payment by the FY 2002 inpatient acute care hospital wage index, without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. (This methodology is the same as the methodology used under the IRF prospective payment system and the SNF prospective payment system.) For purposes of both the proposed rule and the final rule, wage data to compute LTCH-specific wage indices were not available. However, LTCHs and other postacute care facilities (for example, IRFs, SNFs, and HHAs) generally compete in the same local labor market for the same types of employees as inpatient acute care hospitals.

Comment: Several commenters recommended that we develop a wage index based on LTCH data. One commenter suggested that if LTCH wage data are unavailable due to the lack of Worksheet S–3 data, other means could be utilized in the short term to create a labor adjustment mechanism. Alternatively, the commenter suggested that the wage indices used for the acute care hospital inpatient prospective payment system could be weighted to account only for those wage areas containing a LTCH.

One commenter suggested that the payments under the LTCH prospective payment system should be adjusted using the current inpatient acute care hospital wage indices, but a different labor-related share should be chosen to reflect the experience of LTCHs. Another commenter recommended establishing a LTCH wage index using the labor share estimated by the excluded hospital market basket and the wage indices used in the IRF prospective payment system.

Response: At this time, we are unable to develop a separate wage index for LTCHs based solely on LTCH data. Currently, there is a lack of specific LTCH wage and staffing data necessary to develop a separate LTCH wage index accurately. As we stated in the proposed rule, in order to accumulate the data needed for such an effort, we would need to make modifications to the Medicare hospital cost report. Because we do not have LTCH specific wage data, at this time we are unable to determine an appropriate weighting factor for the acute care wage index to account only for those wage areas containing a LTCH. In the future, we will continue to research the appropriateness of the acute care hospital wage index for LTCHs and may investigate the feasibility of developing a wage index specific to LTCHs. However, at this time, we believe that the wage index based on acute care

hospital wage data contains the best and most appropriate data to use, and it is the same wage index used in the prospective payment system for other postacute care for providers (IRFs, SNFs, and HHAs). Therefore, we believe the acute care hospital wage index for FY 2003 is appropriate since LTCHs and other postacute care facilities generally compete in the same local labor market for the same types of employees as inpatient acute care hospitals.

In addition, we believe that the labor-related share, which is based on the excluded hospital with capital market basket, appropriately reflects the experience of LTCHs since it is based on available cost data for facilities excluded from the acute care hospital inpatient prospective payment system, including long-term care, rehabilitation, psychiatric, cancer, and children's hospitals.

Comment: Many commenters expressed concern that no area wage adjustment was provided for in the LTCH prospective payment system. Specifically, they noted the following issues: (1) LTCHs in high wage areas will have difficulty competing in labor markets with other providers whose payments are wage adjusted; (2) LTCHs in high wage areas will have difficulty in recruiting staff with the appropriate skill mixes; and (3) services in high wage areas will need to be cut to meet fixed LTCH prospective payment system payments that are not adjusted to account for differences in area wages. Given these concerns, one commenter submitted findings by The Lewin Group regarding the regression analysis on a wage adjustment for LTCHs.

The Lewin Group performed an analysis which showed that by removing from the sample one LTCH that has high volume and very low cost per case, the wage index is shown to have a positive and statistically significant impact on overall costs (the wage index coefficient was found to be 18.8 percent, which is approximately 25 percent of the full labor-cost share). Therefore, the commenter believed it is appropriate to include the area wage adjustment in a 5-year transition period. The commenter also suggested that if we are not inclined to include an area wage adjustment, an alternative would be to use a modified area wage index adjustment that have ''soft'' upper and lower wage adjustment limits to lessen the gains and losses that otherwise might occur.

Another commenter stated that based on the analysis by The Lewin Group, the statistical results found by us may be influenced by a small number of extreme values from a few hospitals that unduly influenced the statistical models. Other commenters asserted that the sample of LTCHs used by us is not statistically valid for determining whether a wage adjustment is appropriate. One commenter pointed out that the ratesetting file used by us consisted of 20 percent of the LTCHs being located in Texas and 10 percent located in Louisiana. The commenter believed that, since these two States typically have lower wages than the rest of the country, by not incorporating a wage adjustment, we are inappropriately reimbursing providers across all States and failing to take into account the evidence before it.

One commenter claimed that as it is obvious the data or the statistical analysis, or both, used by us are not accurate or appropriate for the sample of LTCHs used, it is not reasonable to conclude that LTCHs have a labor-related share of cost of only 19.91 percent. The commenter cited Tables 7 and 8 of the Health Care Financing Administration Review/Winter 2001, which show the cost of routine nursing care (including bed and board) as representing an average 66 percent of costs of the LTCHs. Another commenter stated that even though the results of our regression model do not support a wage adjustment, there is empirical data compiled by the Bureau of Labor Statistics that clearly identified the wide variability of wages across the country. Several other commenters asserted that allowing a wage adjustment for other providers, but not LTCHs, based on statistical accuracy from a past time period, is poor public policy and this policy could lead to destabilization of payments rates and should be avoided.

One commenter stated that our belief that an area wage index adjustment as a component of a LTCH prospective payment system does not improve the statistical accuracy of the payment is counter intuitive, fails to address concerns that inadequate financing of labor costs will adversely affect patient care, and fails to address a statement made by MedPAC staff that the quality of LTCH data may have an effect on analysis of this issue.

Several commenters also cited MedPAC's June 2001 Report to Congress, in which it states that ''the objective of the geographic adjustment is to make Medicare's payment rates accurately reflect the costs efficient providers would incur in furnishing services to beneficiaries given local market wages.'' In that same report, MedPAC also stated that without a geographic wage adjustment, Medicare's payment rates would be too high in labor markets with relatively low wage rates and providers would face incentives to furnish too many services, while Medicare's payment rates would be too low in labor markets with relatively high wage rates, ''giving providers financial incentives to produce too few services, stint on services or inputs (especially labor), or cease participating in Medicare.''

Other commenters pointed out that numerous older LTCHs, located primarily in high wage areas, have been constrained by their TEFRA target amounts and have been more vigilant in reigning in their expenses. Another commenter speculated that if the average cost per case in LTCHs did not vary with the wage index, the data were unreliable or there is a wide heterogeneity among services. The commenter believed that service heterogeneity is significant because newer facilities have not been subject to the same cost limits as older facilities, and there is a large mix of old and new facilities in the LTCH sector. Furthermore, the commenter explained that, historically, older facilities tend to be located in the northeastern region of the country where the cost of labor is higher on average than in other areas of the country. Therefore, the historical effect of the TEFRA caps may be obscuring the effect of regional differences in wage levels in the empirical model. The commenter added that, moreover, the theory of prospective payment systems is that the national rate is intended to cover a set of clinically similar services. Given that wage levels have proven to vary regionally, by not providing a wage adjustment, the policy gives the national average rate less purchasing power in high labor cost regions of the country, thus diminishing the level of care available to LTCH Medicare beneficiaries in those areas.

Other commenters expressed concern that since, at present, approximately 33 percent of LTCHs are geographically clustered in three States (Texas, Louisiana, and Massachusetts), it would appear that a prospective payment system with no wage adjustment would encourage further clustering of LTCHs. Another commenter also noted that the negative statistical finding could perpetuate acknowledged distortions of the TEFRA payment system. Thus, a wage adjustment for high wage areas would be appropriate.

With respect to our assertion that including a wage adjustment would inappropriately redistribute payments to LTCHs by shifting reimbursement to LTCHs that are located in an area within a higher wage index, but in fact, with lower costs, one commenter stated that

we need to recognize and reward these efficient providers, which would be consistent with the objectives of the proposed prospective payment system for LTCHs, that is, ''to provide incentives to control costs and to furnish services as efficiently as possible.''

Response: In examining the comments and suggestions we received, several issues led us to reconsider our previous decision. First, we agree with the commenters that there is a possibility that TEFRA policies may have in some way affected the relationship between LTCHs' geographic location and costs. As was pointed out by several commenters, older LTCHs with relatively low TEFRA ceilings are often located in large urban areas, which may provide an explanation for the results of our statistical analysis. In addition, the historical effect of the TEFRA caps may be affecting the expected effect of regional differences in wage levels of LTCHs operating under the prospective payment system. We also agree with many of the commenters' concerns that, by providing for a wage adjustment, LTCHs in high wage areas may help ensure that these LTCHs can compete in labor markets with other providers whose payments are wage adjusted; can recruit appropriate staff; and can deliver sufficient high quality services to Medicare beneficiaries.

As to the sensitivity analysis that was conducted, we agree with commenters that it is reasonable to expect that a hospital's wage costs will affect total costs and that, in consequence, the payment amounts under the new system should be adjusted using a wage index. However, the statistical analysis presented by one commenter included analysis where the effect of wages, though small, was positive and significant, as well as other models where the effect was small and negative, but also significant. This indicates that the regression estimates are very sensitive to the inclusion and exclusion of certain facilities. Unfortunately, this limits our ability to base policy on the results of the commenter.

We believe that it is reasonable to assume that wages have an effect on case-mix adjusted LTCH costs. However, we believe that these inconsistent results may be due to limitations in the current data from the LTCHs. This is not surprising because case-mix information has not been previously used for payment for these hospitals, and since various LTCHs have been subject to varying TEFRA limits. Despite the results of the commenter's statistical analysis, we have reconsidered our proposal not to include a wage adjustment and now believe that the conceptual reasons for having an area wage adjustment support transitioning into a wage adjustment, notwithstanding the data problems and issues with the regression analysis. We reevaluated the statistical analysis presented in the proposed rule along with our most recent findings based on the latest available data. Based on the results of this reevaluation, we now agree with the commenter's suggestion that it is appropriate to phase-in a wage adjustment over a transition period.

In the proposed rule, we analyzed the results of the wage index coefficient derived from regression analysis to validate the labor-related share calculated from the market basket. In the regression, we standardized each LTCH's cost per case by the various factors, such as case-mix, bed size, number of cases, length of stay, and occupancy. The wage index coefficient allowed us to approximate the labor-related portion of cost per case. Since the labor-related share derived from the market basket is the proportion of costs that have been identified as being influenced by the local labor amount, we expected this coefficient to be statistically significant and near our market basket measure. The double-log regression analysis in the proposed rule generated a wage index coefficient, which approximated the labor-related portion of cost per case, that was not near the market basket measure (72.902 percent). For this final rule, based on updated data we reran the regression, and the double log regression continues to show a wage index coefficient for the market basket, which at most is approximately 20 percent.

While the statistical analysis did not show a significant relationship between LTCHs' costs and their geographic location, we believe it is appropriate to include some adjustment for area wages. Accordingly, we will incorporate a wage index adjustment, but beginning with FY 2003, as one commenter suggested, we will transition to a full wage adjustment over a 5-year period. Accordingly, for the first year of the LTCH prospective payment system, the area wage adjustment will be one-fifth of the full FY 2002 wage index without geographic reclassifications. We will continue to reevaluate LTCH data as they become available and would propose to adjust the phasein if subsequent data support a change. Therefore, we are amending § 412.525 to add a new paragraph (c), which provides for an appropriate adjustment to the labor-related share of the unadjusted LTCH Federal rate.

As we described in the proposed rule and as several commenters supported, we are establishing a LTCH wage index using the labor-related share estimated by the excluded hospital market basket with capital and the wage indices computed from data from inpatient acute care hospital wage data without regard to reclassifications under sections 1886(d)(8) or 1886(d)(10) of the Act. This is consistent with the area wage adjustments under the prospective payment systems for other postacute care providers (IRFs, SNFs, and HHAs).

As discussed above, to calculate wage adjusted payments for the payment rates set forth in this final rule, the prospectively determined unadjusted LTCH Federal rate is multiplied by the labor-related percentage (72.902) to determine the labor-related share of LTCH Federal rate. The labor-related share is then multiplied by the applicable LTCH wage index as shown in Table 1 (for urban areas) and Table 2 (for rural areas) in the Addendum of this final rule. For FY 2003, the applicable LTCH wage index will be one-fifth (the first year's proportionate fraction of a 5-year phasein) of the full FY 2002 inpatient acute care hospital wage index, without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. (See section X.J.2. of this preamble regarding geographic reclassification.) The resulting wage-adjusted labor-related share is then added to the nonlabor-related share (27.098 percent), resulting in a wage adjusted payment rate. The following example illustrates how the wage-adjusted LTCH Federal rate would be computed for a LTCH located in Chicago, IL (MSA 1600) with a hypothetical LTCH unadjusted Federal rate of $10,000. The FY 2003 one-fifth LTCH wage index value for MSA 1600 is 1.0202. The labor-related share (72.885 percent) of the hypothetical LTCH Federal rate is $7,288.50 ($10,000 × 0.72885) and the nonlabor-related share (27.115 percent) is $2,711.50 ($10,000 × 0.27115). Therefore, the wage-adjusted LTCH payment rate is:

$10,147.23 = ($7,288.50 × 1.0202) + $2,711.50.

For FY 2003, the applicable LTCH wage index for LTCHs located in urban areas and for LTCHs located in rural areas are shown in Tables 1 and 2, respectively, in the Addendum to this final rule.

Comment: MedPAC examined two possible reasons why we found that the differences in local input prices were not significant predicators of costs for care in LTCHs: high correlation of patient need with local wages and a lack

of variation in wages for locations. It found ''the correlation of patient need and wages to be low'' and that ''the wages for counties where LTCHs are located did vary widely.'' MedPAC also hypothesized that limitations on increases in costs imposed by the TEFRA payment system could have distorted costs; however, it was unable to test this third possibility. MedPAC expressed concern that if we do not adjust rates for local input prices, ''hospitals with low wages may be overpaid and those with high wages may be underpaid.'' However, MedPAC also contended that ''if CMS does adjust to account for differences in wages, the opposite error may result.'' In conclusion, MedPAC stated that the need for a wage adjustment should be reexamined when better data are available.

Three additional commenters agreed with our proposal not to include an adjustment for area wages until better data are available. One commenter agreed that there should not be an area wage adjustment for payment to LTCHs because there is not a significant distinction between the LTCHs' costs and their geographic location. Another commenter also agreed that there should not be an area wage adjustment at this time, stating that the decision should be made based on LTCH data rather than an assertion that all payment systems need to include the same components. The same commenter added that until the LTCH data support a change in the policy, the proposed position not to include a wage adjustment should be maintained.

Response: We appreciate the commenters' support of our proposal to delay implementing the wage adjustment. However, as discussed above, we have reconsidered our position and are phasing in a wage index over a 5-year period.

2. Adjustment for Geographic Reclassification

In accordance with section 307(b) of Public Law 106–554, we also examined the appropriateness of applying an adjustment for geographic reclassification to payments under the LTCH prospective payment system, where hospitals could request reclassification from one geographic location to another for the purpose of using the other area's wage index value, Federal payment rates, or both. A similar adjustment is available under the acute care hospital inpatient prospective payment system in accordance with section 1886(d)(10) of the Act. The adjustment would treat a hospital located in one geographic area as being located in another geographic area, if certain conditions are met. As explained below, at this time, we are not implementing an adjustment for geographic reclassification in the prospective payment system for LTCHs.

In the March 22, 2002 proposed rule, we indicated that our data identified 14 rural LTCHs, but our analysis supported neither an adjustment to account for differences in area wage levels nor an adjustment for LTCHs located in rural areas or large urban areas because the regression analysis indicated that a wage adjustment would not increase the accuracy of payments. Therefore, under the LTCH prospective payment system, we proposed that all LTCHs would be treated the same for the purposes of payment, regardless of location. Since there would have been no purpose for LTCHs to reclassify to another area, we did not propose to implement an adjustment for geographic reclassification in the prospective payment system for LTCHs.

After publication of the March 22, 2002 proposed rule, we revisited the appropriateness of an adjustment for geographic reclassification. Under the TEFRA payment system, hospitals and units excluded from the acute care hospital inpatient prospective payment system, including LTCHs, are not required to fill out information related to wage-related costs on the Medicare cost report (Worksheet S–3). Thus, we would need to provide for the collection of pertinent wage information as well as developing some type of application and determination process before a geographic reclassification process could be implemented.

In the proposed rule, we had stated that if a wage adjustment was ultimately implemented as part of the LTCH prospective payment system, and it was determined that it was appropriate to make geographic reclassification adjustments, as we stated above, we would need to prepare instructions for data collection on LTCH wage-related costs in order to determine an appropriate geographic reclassification adjustment for LTCHs. It would also be necessary to develop an application process as well as determination procedures.

We have only included a wage index adjustment that will transition to a full adjustment over 5 years. Also, we will not be establishing a geographic reclassification process at this time. We will monitor all incoming wage-related data and will examine the appropriateness of implementing a geographic reclassification process at a later date.

Comment: One commenter supported our position of providing no adjustment for geographic reclassification in the LTCH prospective payment system. It was the commenter's position that LTCHs, regardless of location, should be treated the same for purposes of payment.

Response: While we appreciate the commenter's support of our position in this matter, as we stated in the proposed rule, we have revisited the appropriateness of an adjustment for geographic reclassification based on the latest data available. Hospitals that are currently excluded from the acute care hospital inpatient prospective payment system (that is, hospitals paid under the TEFRA payment system) are not required to provide wage-related information on the Medicare cost report (Worksheet S–3). Thus, in order to provide for an adjustment for geographic reclassification, we would first need to establish instructions for data collection on LTCH wage-related costs, and we would also need to develop an application process and determination procedures.

Also, in order to be consistent with the area wage adjustments made to other postacute care providers (that is, under the existing HHA, SNF, and IRF prospective payment systems), we are using the inpatient acute care hospital wage data without regard to any approved geographic reclassifications under section 1886(d)(8) or 1886(d)(10) of the Act. Therefore, we are not adopting the use of ''post reclassification'' wage data, and the area wage adjustment for a LTCH will be based on the provider's actual location, without regard to the urban or rural designation of any affiliated or related providers.

While we are providing for a phased-in wage adjustment for LTCHs, as we discussed above, we will be transitioning to a full wage adjustment over a 5-year period. That is, the LTCH payment rate will be adjusted, but only by one-fifth of the hospital's wage index in the first year (FY 2003). Adjustment will be phased-in in one-fifth increments to 100 percent of the wage index over the next 4 years. Considering that the effect of the adjustment for area wages will be reduced significantly for the first year and, therefore, the impact of any reclassification would be minimal, we believe the administrative burden resulting from an attempt to develop an adjustment for geographic reclassification at this time outweighs the benefits of any reclassification. However, we intend to examine the feasibility of establishing a system for geographic reclassifications as more of

the wage index in subsequent years is used to establish prospective payment system payments.

Accordingly, in this final rule, we are not providing for an adjustment for geographic reclassification in the LTCH prospective payment system. However, if we determine at a later date that a reclassification adjustment for LTCHs is warranted, we will explore the development of an appropriate reclassification process.

3. Adjustment for Disproportionate Share of Low-Income Patients

Section 307(b) of Public Law 106–554 requires that we examine the appropriateness of an adjustment for hospitals serving a disproportionate share (DSH) of low-income patients, consistent with section 1886(d)(5)(F) of the Act, which establishes this adjustment for inpatient acute care hospitals. As we discussed in the proposed rule, in assessing the appropriateness of a similar adjustment for LTCHs serving low-income patients, as specified in section 1886(d)(5)(F) of the Act, we focused our analysis on the relationship between serving low-income patients and LTCHs' cost per case. Based on the results of our analysis, we did not propose an adjustment for the treatment of a disproportionate share of low-income patients. Given the statistical analysis presented in the proposed rule (described below) and our most recent findings based on the latest available data that confirm the analysis in the proposed rule, at this time we are not implementing an adjustment for the treatment of a disproportionate share of low-income patients.

Under section 1886(d)(5)(F) of the Act, in calculating Medicare payments for inpatient services at acute care hospitals, the disproportionate share patient percentage takes into account both the percentage of Medicare patients who receive SSI and the percentage of Medicaid patients who are not entitled to Medicare. The DSH patient percentage is defined as:

$$\text{DSH Patient Percent} = \frac{\text{Medicare SSI Days}}{\text{Total Medicare Days}} + \frac{\text{Medicaid, Non-Medicare Days}}{\text{Total Patient Days}}$$

Based on this formula, an inpatient acute care hospital qualifies for a DSH adjustment under section 1886(d)(5)(F)(v) of the Act (as amended by section 211(a) of Public Law 106–554) if the hospital has a DSH patient percentage greater than or equal to 15 percent. The calculation of the DSH payment adjustments are implemented at § 412.106.

We analyzed the results of applying a DSH adjustment, in accordance with the criteria at section 1886(d)(5)(F) of the Act described above, on LTCHs. As we discussed in the proposed rule (67 FR 13467), because the LTCH prospective payment system must be budget neutral in accordance with section 123(a) of Public Law 106–113, in modeling payments we found that the inclusion of such a DSH policy would have resulted in a 3.31 percent decrease to the base payment rate. Furthermore, the inclusion of such a DSH policy would also have resulted in a 3.79 percent decrease in the r-squared value (a statistical measure of how much variation in resource use among cases is explained by the system). Accordingly, we found that including a DSH adjustment that is consistent with section 1886(d)(5)(F) of the Act would reduce the explanatory power of the LTCH prospective payment system, or the ability of the payment system model to predict cost per case, while lowering the base payment rate. Thus, we did not propose to implement a DSH adjustment consistent with section 1886(d)(5)(F) of the Act. For this final rule, based on updated data, we reevaluated the inclusion of DSH adjustment consistent with section 1886(d)(5)(F) of the Act, and our analysis based on the latest available data confirmed the analysis in the proposed rule. In fact, while for a wage index adjustment there was at least some (though small) positive and significant effect of wages on costs in the regression, this was not the case for a DSH adjustment. The regression showed no positive effect on costs. Therefore, at this time we are not implementing a DSH adjustment consistent with section 1886(d)(5)(F) of the Act.

As discussed in the proposed rule, we also evaluated an alternative adjustment, using regression analysis, that takes into account both the percentage of Medicare patients who are receiving SSI (SSI percent) and the percentage of Medicaid patients who are not entitled to Medicare (Medicare percent) without the other criteria specified in section 1886(d)(5)(F) of the Act. This analysis was made to determine if there was any relationship between these two variables and cost per case. The results of this analysis showed that the regression coefficients for both the percentage of Medicare patients who are receiving SSI and the percentage of Medicaid patients who are not entitled to Medicare would be statistically significant at the 99-percent level. However, the positive relationship between cost per case and the percentage of LTCH Medicare patients who are receiving SSI would be offset by a negative relationship between cost per case and the percentage of LTCH Medicaid patients who are not entitled to Medicare. This implied that while costs per discharge would appear to increase (slightly) as the percentage of LTCH Medicare SSI patients increases, costs per discharge would decline (slightly) as the percentage of LTCH Medicaid, non-Medicare patients increased. Therefore, we did not propose to implement an adjustment for the treatment of a disproportionate share of low-income patients based on a LTCH's combined SSI percentage and Medicaid percentage. For this final rule, based on latest available data, we reevaluated the inclusion of DSH adjustment based on a LTCH's combined SSI percentage and Medicaid percentage, and our findings confirmed the analysis in the proposed rule. Therefore, at this time we are not implementing an adjustment for the treatment of a disproportionate share of low-income patients based on a LTCH's combined SSI percentage and Medicaid percentage.

Finally, in the proposed rule, we also examined an adjustment for the treatment of low-income patients based solely on a LTCH's SSI ratio (the percentage of Medicare patients who are receiving SSI). The SSI ratio is calculated by dividing Medicare SSI days by total patient days. While the regression coefficient was positive, it was not very large (0.04), which meant that for every 1 percent increase in the SSI percent, a 0.04 percent increase in cost per case would be observed. Thus, at best, an empirically based adjustment based on the SSI percent would have been very small. Furthermore, the positive regression coefficient for the SSI percentage was significantly influenced by the large SSI percentages of only a few LTCHs. Because section 123(a) of Public Law 106–113 requires that the LTCH prospective payment system be budget neutral, applying such an adjustment under the proposed rule

would have resulted in a 2.98 percent reduction in the base payment rate for all LTCHs that was based on a small positive regression coefficient that was due mostly to a relatively small number of LTCHs with a large SSI percentage. Therefore, we did not believe it was appropriate to implement a DSH adjustment based on a LTCH's SSI percentage. Based on updated data, for this final rule, we have reexamined an adjustment for the treatment of a disproportionate share of low-income patients based on a LTCH's SSI percentage, and our analysis confirmed the results presented in the proposed rule. In fact, using the same methodology as used in the proposed rule, and using the latest available data, the regression coefficient actually decreased from .04 percent to .02 percent.

Because the analyses described above do not indicate an increase in the accuracy of payments based on the adjustments examined for the treatment of a disproportionate share of low-income patients, we are not implementing a disproportionate share adjustment in this final rule.

Comment: Commenters provided various reasons for including a DSH adjustment in the LTCH prospective payment system. One commenter asserted that the acute care hospital inpatient prospective payment system has a DSH policy although it was not significantly correlated with Medicare cost per case at implementation. Another commenter stated that the omission of a DSH adjustment is inconsistent with other Medicare-related payments (for example, acute care hospital inpatient prospective payment system and IRF prospective payment system). The commenter believed it inappropriate and inaccurate to view LTCHs differently in comparison with other types of hospitals. Several commenters explained that for the same reasons that acute care hospitals that serve a disproportionate number of Medicaid and Medicare SSI-eligible patients need additional reimbursement to compensate for the financial burden of treating patients from these populations, LTCHs being reimbursed under the prospective payment system need supplemental payments.

Another commenter expressed concern that the lack of a DSH adjustment, combined with other proposed payment policies in the LTCH prospective payment system, may create disincentives for LTCHs to admit dually eligible patients, especially those likely to exhaust their Medicare Part A benefits during their stay. One commenter noted that a DSH payment would appropriately account for high costs incurred by facilities that treat a particularly high proportion of low-income patients. It was also pointed out by a commenter that the inclusion of a DSH adjustment similar to that provided in acute care hospitals under the hospital inpatient prospective payment system would help in ensuring access to care for low-income patients in LTCHs. In addition, the absence of DSH payments, unlike other prospective payment systems that provide for such an adjustment, deprives LTCHs the opportunity for governmental participation in the cost of care for the medically indigent patient population.

Another commenter stated that even though payments directed to DSH hospitals would be diverted from base payments or other elements of payment, as a matter of social policy, additional support should be provided to DSH hospitals in recognition of the additional burden that these hospitals incur by ensuring access to care for low-income populations. Moreover, as another commenter pointed out, in the past, Congress and MedPAC have established that DSH payments are a matter of important public policy. Also, it is the responsibility of the government to make DSH payments, as it is an important feature of health care policy and should be subordinate to notions of inaccuracy.

Several commenters understood that a DSH policy had not been proposed as part of the LTCH prospective payment system because it would not increase payment accuracy, as measured by a case-based regression model. However, as one commenter pointed out, the commenters believe that the LTCH prospective payment system regression models did not show a relationship between cost and indigent care because these models had limited utility due to the legacy of the TEFRA caps on older LTCHs, based on Medicaid-eligible days.

Response: As mandated by the statute, we examined the appropriateness of an adjustment for LTCHs serving a disproportionate share of low-income patients, consistent with § 1886(d)(5)(F) of the Act (which established the DSH adjustment for acute care hospitals). Examining the most recent LTCH data available to us, we determined that an adjustment consistent with that of inpatient acute care hospitals would reduce the ability of the payment system to predict cost per case while lowering the base payment rate. Also, while the data demonstrated in both acute care hospital inpatient prospective payment system, as well as the IRF prospective payment system, support the appropriateness of a DSH payment adjustment, no such data support was forthcoming for LTCHs.

As directed by the statute, we determined whether a DSH adjustment should be established for LTCHs. To provide for a DSH adjustment for LTCHs solely because it is consistent with other prospective payment systems or appropriate in comparison with other types of hospitals, we believe is an insufficient justification for providing such an adjustment. Rather, our concern lies in whether we can equitably and fairly establish a DSH adjustment in the context of a prospective payment system designed for LTCHs. Moreover, we sincerely share the concerns of commenters with regard to seeking a means to help pay for the additional costs of those facilities that serve a large population of low-income Medicare patients. However, we also believe it is our responsibility to establish a payment system for LTCHs that would prove to be fair and equitable to providers and patients, alike.

In that regard, we have evaluated alternative methods to provide some type of DSH payment adjustment. As stated above, using regression analysis which took into account both the percentage of Medicare patients receiving SSI and the percentage of Medicaid patients not entitled to Medicare, we found no significant empirical relationship between these variables and cost per case. In addition, we examined an adjustment for the treatment of low-income Medicare patients based solely on a LTCH's SSI ratio, but that also did not show significant evidence that a DSH adjustment would be appropriate.

One commenter supposed that the LTCH prospective payment system regression models did not show a relationship between LTCH's cost per case and serving low-income patients due to the effects of the caps imposed on the older LTCHs under the TEFRA payment system. Although it may be possible that the effects of cost-based reimbursement may have affected the relationship between a LTCH's cost per case and serving low-income patients in the regression analysis, we continue to believe that the best option available at this time would be to collect and interpret new data as it becomes available, after the LTCH prospective payment system is implemented and LTCHs' costs are no longer affected by the TEFRA target amount limitation.

4. Adjustment for Indirect Teaching Costs

In accordance with the directive of section 307(b) of Public Law 106–554 to examine ''appropriate adjustments'' to payments under the LTCH prospective payment system, for the proposed and final rules, we also examined the appropriateness of applying an adjustment for indirect teaching costs to payments under the LTCH prospective payment system. Based on the analysis described below, we did not propose to implement an adjustment for indirect teaching costs.

There are presently 14 LTCHs with teaching programs. LTCHs with teaching programs tend to be older, larger (greater than 125 beds) hospitals, located in large urban areas, and have a higher proportion of low-income patients but with a lower case-mix index. As we discussed in the proposed rule (67 FR 13468), based on a double log regression, we found that the indirect teaching cost variable would be negative and not significant. We looked at different specifications for the teaching variable. We used a resident-to-bed ratio as the coefficient for the teaching variable in the regression that is currently used to measure teaching intensity under the acute care hospital inpatient prospective payment system for operating costs. We also used a ratio of residents to average daily census (defined as total inpatient days divided by the number of days in the cost reporting period) that is currently used under the acute care hospital inpatient prospective payment system for capital-related costs, as a measure of teaching intensity. We based this analysis on the estimated number of full-time equivalent (FTE) residents assigned to the inpatient area of the LTCH. In all of our payment regressions, we determined that the teaching variable would not be significant. This means that no empirical evidence exists to show that LTCHs' cost per case would vary with teaching costs.

For this final rule, based on updated data, we reexamined the appropriateness of an adjustment for indirect teaching costs using the approach described above. Our most recent findings based on the latest available data confirmed the analysis in the proposed rule that no empirical evidence exists to show that LTCHs' cost per case would vary with teaching costs.

Comment: One commenter supported our proposal to not include a payment adjustment for indirect teaching costs but requested that we review the data within 2 years and determine if an adjustment is needed at that point.

Response: We intend to evaluate data on indirect teaching costs in LTCHs as more data become available to determine if additional data support proposing any future payment adjustments.

Accordingly, in this final rule, for the same reason indicated above, we are not implementing an adjustment for indirect teaching costs.

5. Cost-of-Living Adjustment (COLA) for Alaska and Hawaii

In accordance with the directive of section 307(b) of Public Law 106–554 to examine ''appropriate adjustments'' to payments under the LTCH prospective payment system, we also examined the appropriateness of applying a cost-of-living adjustment (COLA) under the LTCH prospective payment system for LTCHs located in Alaska and Hawaii.

There is currently one LTCH in Hawaii and no LTCHs in Alaska. As we discussed in the proposed rule (67 FR 13468), in the absence of a COLA, we performed simulations, which indicate that the facility in Hawaii might experience a payment to cost ratio of 0.89 percent. In this final rule, using updated data, we performed simulations and again found that the payment to cost ratio is approximately .90 percent. Therefore, as we proposed, we are implementing a COLA for LTCHs in Hawaii and Alaska to account for the higher costs incurred in those States.

As we explained in the proposed rule, the IRF proposed rule (November 3, 2000, 65 FR 66357) indicated that based on payment simulations, without a COLA, the one IRF located in Alaska may have a loss and the one IRF for which data were available would have a gain. Due to the small number of cases, analysis of the simulation results for IRFs were inconclusive regarding whether a cost-of-living adjustment would improve payment equity for these facilities. Accordingly, we did not include a COLA adjustment for those hospitals in the prospective payment system for IRFs (65 FR 66357, November 3, 2000). We believe it appropriate, however, to implement a COLA for LTCHs based on the higher costs found in Hawaii. In general, the COLA would account for the higher costs in the LTCH and will eliminate the projected loss that the LTCH in Hawaii will experience absent the COLA. Furthermore, this policy is consistent with the COLA made to account for the higher costs in acute care hospitals in Alaska and Hawaii under both the operating prospective payment system and the capital prospective payment system. We will make a COLA, under § 412.525(b), to payments for LTCHs located in Alaska and Hawaii by multiplying the standard Federal payment rate by the appropriate factor listed in the table below. These factors are obtained from the U.S. Office of Personnel Management.

COST-OF-LIVING ADJUSTMENT FACTORS FOR ALASKA AND HAWAII HOSPITALS

Alaska:	
All areas	1.25
Hawaii:	
Honolulu County	1.25
Hawaii County	1.165
Kauai County	1.2325
Maui County	1.2375
Kalawao County	1.2375

We received one comment in support of providing a COLA to payments for LTCHs located in Alaska and Hawaii. For the reasons noted above, we are implementing a cost-of-living adjustment to payments for LTCHs located in Alaska and Hawaii, as described above, in this final rule.

6. Adjustment for High-Cost Outliers

In accordance with the directive of section 307(b) of Public Law 106–554, we also examined the appropriateness of an adjustment for additional payments for outlier cases. These are cases that have extraordinarily high costs relative to the costs of most discharges. Providing additional payments for outliers could strongly improve the accuracy of the LTCH prospective payment system in determining resource costs at the patient and hospital level. These additional payments would reduce the financial losses that would otherwise be caused by treating patients who require more costly care and, therefore, would reduce the incentives to underserve these patients.

In the March 22, 2002 proposed rule (67 FR 13468), we discussed and considered various outlier policy options. Specifically, we considered outlier policies under which outlier payments would be projected to be 5 percent, 8 percent, or 10 percent of total LTCH prospective payment system payments. We considered the impact of setting the outlier target percentage at 5 percent because that percentage is consistent with the range of targets provided under section 1886(d)(5)(A)(iv) of the Act for the acute care hospital inpatient prospective payment system. We also considered an outlier target of 10 percent because that percentage was recommended in an

industry study commissioned by NALTH. In addition, we considered an outlier target of 8 percent to analyze the impact of setting the outlier target at some percentage between 5 and 10 percent.

In the proposed rule, we also examined marginal cost factors, or the change in total cost with one unit of change in output, of 55 and 80 percent. We examined an 80-percent marginal cost factor for outlier payments because it is the same as the factor used under both the acute care hospital inpatient prospective payment system and the IRF prospective payment system. We also examined a 55-percent marginal cost factor in order to analyze the impact that a lower marginal cost factor would have on outlier payments and payments for all other cases.

As discussed in further detail in the June 4, 1992 acute care hospital inpatient prospective payment system proposed rule (57 FR 23640), a study performed by RAND Corporation indicated that the marginal cost of care is usually less than the average cost because later days of a stay have considerably lower costs than the earlier days of the stay.

In order to determine the most appropriate outlier policy, we analyzed the extent to which the various options would reduce financial risk, reduce incentives to underserve costly beneficiaries, and improve the overall fairness of the system. We believed an outlier target of 8 percent would allow us to achieve a balance of the above stated goals. Our regression analysis showed that additional increments of outlier payments over 8 percent would reduce financial risk, but by successively smaller amounts. Since outlier payments are included in budget neutrality calculations, outlier payments would be funded by prospectively reducing the non-outlier prospective payment system payment rates by the proportion of projected outlier payments to projected total prospective payment system payments in the absence of outlier payments; the higher the outlier target, the greater the (prospective) reduction to the base payment rate.

In the proposed rule, we included a provision for outlier payments under the LTCH prospective payment system and proposed to set outlier numerical criteria prospectively before the beginning of each Federal fiscal year so that outlier payments would be projected to equal 8 percent of total payments under the LTCH prospective payment system. Based on regression analysis and payment simulations, we believed this option would optimize the extent to which we would be able to protect vulnerable hospitals, while still providing adequate payment for all other cases that are not outlier cases.

We proposed under § 412.525(a) to make an outlier payment for any discharges where the estimated cost of a case would exceed the adjusted LTCH prospective payment system payment for the LTC–DRG plus a fixed-loss amount. The fixed-loss amount is the amount used to limit the loss that a hospital will incur under an outlier policy. This would result in Medicare and the LTCH sharing financial risk in the treatment of extraordinarily costly cases. The LTCH's loss would be limited to the fixed-loss amount and the percentage of costs above the marginal cost factor. We proposed to calculate the estimated cost of a case by multiplying the overall hospital cost-to-charge ratio by the Medicare allowable covered charge.

Our analysis of payment-to-cost ratios for outlier cases showed that a marginal cost factor of 80 percent appropriately addresses outlier cases that are significantly more expensive than non-outlier cases. This factor would ensure that there is a balance between the need to protect LTCHs financially, while encouraging them to treat expensive patients and maintaining the incentives of a prospective payment system to improve the efficient delivery of care. Based on this analysis and consistent with the marginal cost factor used under the IRF prospective payment system and under section 1886(d) of the Act for inpatient acute care hospitals, we proposed to pay outlier cases 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal prospective payment for the LTC–DRG and the fixed-loss amount). We proposed to calculate the fixed-loss amount by simulating aggregate payments with and without an outlier policy, using FY 2000 MedPAR claims data and the best available cost report data in an iterative process to determine a fixed-loss threshold that would result in outlier payments being equal to 8 percent of total payments. For FY 2003, we proposed to implement a fixed-loss amount of $29,852 based on an outlier target of 8 percent (67 FR 13472). Therefore, for FY 2003, we proposed to pay an outlier case 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal prospective payment for the LTC–DRG prospective payment system payment and the fixed-loss amount of $29,852). For this final rule, we used FY 2001 MedPAR claims data and the best available cost report data to determine a fixed-loss threshold that would result in outlier payments being equal to 8 percent of total payments. In this final rule, for FY 2003, we are implementing a fixed-loss amount of $24,450 (based on an outlier target of 8 percent) as a result of the increase in the standard Federal base rate explained in section X.K.2. of this preamble. Therefore, for FY 2003, we will pay an outlier case 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal prospective payment for the LTC–DRG prospective payment system payment and the fixed-loss amount of $24,450).

Comment: One commenter believed that the outlier target is appropriately set at 8 percent of total Medicare payments to LTCHs and strongly recommended that outliers be financed using the same methods and principles currently in place for acute care hospitals. Other commenters stated that our calculation of an outlier target of 8 percent is appropriate, but asked that the calculation be reevaluated on an annual basis, and that consideration should be given to lowering the outlier target gradually down to 5 percent to be consistent with the policy established for the acute inpatient hospital prospective payment system, if the data support such a lowering of the outlier target.

Response: While our simulations, based on the best data available, showed that an outlier target of 8 percent is most appropriate at this time, considering that the LTCH prospective payment system is a new payment system, we do plan to reevaluate the outlier target payment percentage as more data on LTCHs become available and would consider proposing a change to the outlier payment percentage if warranted.

Comment: One commenter expressed concern about our reliance on the study conducted by the Rand Corporation, used for the outlier policy under the acute care hospital inpatient prospective payment system, which found that later days of a stay have considerably lower costs than the earlier days of a stay (57 FR 23640, June 4, 1992). The commenter disagreed with the findings of this study and stated that the findings are not reflective of the situation in its facility where there is a high number of ventilator weaning cases. In the commenter's facility, as a patient's respiratory status improves, the rehabilitation resources are increased to prepare the patient for discharge from the LTCH. The commenter also suggested that we further evaluate this study in relation to cases where a

patient makes an end of life decision to be removed from a ventilator, which, since this decision may not occur until very late into a patient's stay, can be extremely resource intensive and costly.

Response: While the findings of the RAND study (which was used for the outlier policy under the acute care hospital inpatient prospective payment system) may not typically reflect the resource usage and costs at the commenter's LTCH, they are, however, indicative in general of the trends in resource use at hospitals where the costs of later days of a stay are less than the costs of earlier days of a stay. We understand that LTCHs that treat a high number of ventilator weaning cases may have unique cost structures. However, we believe that, according to data available at this time, the final policy sufficiently reimburses LTCHs for high-cost cases.

Comment: One commenter noted that, although the fixed-loss amount in the proposed adjustment for high-cost outliers is consistent with the Medicare acute care hospital inpatient prospective payment system, an outlier policy that is more related to the costs and length of stay of each LTC–DRG would be more appropriate because many shorter stay LTC–DRGs will rarely reach the outlier threshold dollar amount. The commenter was also concerned that a fixed outlier payment may result in underpayments from some Medigap insurers. As an alternative to the uniform fixed loss amount proposed by CMS for all patients regardless of their assigned LTC–DRG, the commenter suggested a set of LTC–DRG-specific outlier thresholds that are set at a fixed multiple of the payment for each LTC–DRG. The commenter believed that a fixed multiple of slightly more than 2.0 of the LTC–DRG payment amount yields an outlier target of 8 percent, meaning that the cost for a case would generally need to exceed twice the payment amount to qualify for outlier payments. The commenter believed that this approach distributes outlier payments evenly across LTC–DRG case types and across LTCHs.

Another commenter questioned our proposal to set the fixed-loss amount across all LTC–DRGs at a fixed amount, and stated that, given the small number of LTCHs and the wide variety of patients treated relative to acute care hospitals, such a fixed policy may inappropriately assume that the underlying cause of all high-cost cases is the same across LTC–DRGs. The commenter explained that LTCHs that treat a disproportionate number of patients who are unlikely to be discharged in a timely manner, including patients with spinal cord injuries or who require a ventilator, might experience significant losses serving those patients. The commenter requested that we consider varying the fixed-loss threshold and the outlier payment percentage by LTC–DRG to ensure that LTCHs with longer than average stays receive adequate payment.

Other commenters stated that the proposed outlier target of 8 percent is too low and will place an unfair financial burden on facilities that treat patients with ''clinically appropriate'' long stays. One commenter explained that, since its facility specializes in caring for ventilator-dependent patients who have ''complex, highly acute long lengths of stay'', the proposed outlier policy would create a ''significant and unrealistic economic burden'' on the facility. The commenter suggested that, if the proposed outlier target is not increased, we should reevaluate which DRGs have the most outliers and why. The commenter assumed that ''true outliers'' are primarily grouped in a very small number of LTC–DRGs.

As an alternative to the proposed outlier policy, the commenter suggested that we consider creating a specific category of LTCHs that would meet ''minimum volume threshold'' levels for certain types of patients, such as ventilator weaning. Under the commenter's proposal, if providers meet a minimum number of cases per year and if the threshold has been met, these highly specialized facilities may qualify to receive additional reimbursement without having to incur fixed losses for cases with long lengths of stay. The commenter recommended a threshold of 130 cases per year, given that there are approximately 270 LTCHs and 70,000 yearly discharges nationally. Since the national average number of discharges per facility is 260, a threshold of 130 cases would indicate that a significant proportion of a facility's patients must be in a specific DRG category. The commenter also suggested that we create an additional LTC–DRG for excessively long lengths of stay, which would be constructed in a way so as not to provide any financial gain to facilities that continue to keep patients in a LTCH beyond the arithmetic mean length of stay in a given LTC–DRG. This suggested additional LTC–DRG would provide reimbursement that is appropriate to cover the costs of treating patients in facilities with specialized programs.

Response: In a prospective payment system based on DRGs, the amount of funds designated for high-cost outliers and the methodology used to make these payments must balance the conflicting considerations of the need to protect hospitals with costly cases, while maintaining incentives to improve overall efficiency. In this regard, we believe the payment methodology should focus on improving efficiency in the treatment of the cases, where the greatest amount of control can be exercised, in order to compensate somewhat for the ''losses'' incurred in treating the more costly cases that are less predictable and more difficult to control.

In selecting an outlier policy, the first consideration is the amount that a hospital will ''lose'' before outlier payments begin. The ''loss'' should be significant enough to avoid an incentive to reach the outlier threshold, yet not large enough to create excessive financial hardship. Since the proposed FY 2003 LTCH standard Federal rate was $27,649.02, as a measure of scale, we believed that the fixed-loss amount should relate to this amount. We did examine the impact of setting the outlier target percentage at 5 percent, 8 percent, and 10 percent. We found that an outlier target of 8 percent is the most reasonable since our regression analysis showed that additional increments of outlier payments over 8 percent would reduce financial risk, but by successively smaller amounts. In addition, since the LTCH prospective payment system is a budget neutral payment system, any increase in outlier payment must be offset by a decrease in payment for all discharges that are not outliers.

Given the range in the costs of each case treated across all LTCHs, we believe that a policy that uses a uniform fixed-loss amount for all LTC–DRGs is most equitable. Use of a fixed-loss amount avoids creating an outlier payment incentive to differentially accept or treat patients in different LTC–DRGs, or both. That is, if cases in one LTC–DRG become eligible for outlier payments after a $10,000 loss is incurred, whereas cases in another LTC–DRG must incur a $20,000 loss before qualifying for outlier payments, cases in the first LTC–DRG might be favored and greater efforts might be made to limit acceptance and treatment of cases in the second LTC–DRG. We believe that it is particularly important to avoid such an incentive, given the tendency for certain LTCHs to specialize in treating specific types of patients, some which may be extremely costly. Therefore, we are not adopting the commenter's proposal to vary the fixed-loss amount by each LTC–DRG.

We also examined the impact of a marginal cost factor of 55 percent instead of the 80-percent factor that was

proposed. Under either marginal cost factor, while the amount designated for payment of high-cost outliers would remain set at 8 percent, the higher the marginal cost factor, the higher the fixed-loss amount. Our analysis showed that a marginal cost factor of 80 percent is most suitable because, under this method using a higher threshold, the cases identified as outliers are very expensive, whereas the additional cases that would qualify for an outlier payment due to the lower threshold under a marginal cost factor of 55 percent are not unusually expensive. Our intent is to reimburse a LTCH for only those outlier cases that are unusually costly. We believe that, by establishing the fixed-loss amount at $24,450 based on more recent available data (instead of the proposed $29,852) with the concomitant marginal cost factor of 80 percent, we are ensuring that only the unusually costly cases would qualify for additional reimbursement. Alternatively, if a marginal cost factor of 55 percent would be used to maintain the 8 percent target, the fixed-loss amount would necessarily be lowered, allowing for additional, less costly cases to qualify for a portion of the 8-percent outlier target. Therefore, we believe that the marginal cost factor of 80 percent most appropriately addresses outlier cases that are significantly more expensive than nonoutlier cases while simultaneously maintaining the integrity of the LTCH prospective payment system.

In addition, we did not vary the outlier target percentage by each LTC-DRG in order to allow for Medigap payments in lower-payment LTC–DRGs, nor did we create ''minimum volume thresholds'' for specific cases, because to do so would unnecessarily provide outlier payments for all cases, including those that are relatively inexpensive. Varying the outlier target by LTC–DRG would inappropriately distribute payment for high-cost outliers over all cases, thereby reducing the resources available to finance those with truly high costs. Under the aggregate outlier target that we proposed, every LTC–DRG is, in effect, ''funding'' the outlier target, leaving more resources available to cover the high-cost outliers. We believe that this is the most reasonable method of implementing a stop-loss on the unusually high-cost cases. Furthermore, the method of using an outlier target that applies across all LTC–DRGs is consistent with the method used under the acute care hospital inpatient prospective payment system and IRF prospective payment system.

Finally, we are not adopting a policy that accounts for long-stay outliers because, according to our analysis, while high-cost outlier cases tend to fall in the tracheostomy, ventilator management, and respiratory failure DRGs, long-stay outliers are not always concentrated in these same categories identified by the high-cost outlier methodology. Because we believe it is important to focus on mitigating the losses incurred when treating extremely costly cases, we do not believe it is necessary to separately account for long-stay outliers at this time.

In summary, while we are not adopting the commenters' recommendations concerning high-cost outliers at this time, we do intend to reevaluate the possibility of a system based on severity-adjusted LTC–DRGs as more accurate data become available and may propose changes in our policy if they are warranted.

Comment: One commenter believed that while additional payments for outliers are appropriate to help cover the costs of unusually high-cost patients, the proposed outlier target of 8 percent is too high and may pose a risk of undermining the goals of the LTCH prospective payment system. The commenter asserted that an outlier target of 8 percent may create an incentive for LTCHs to ''hang on to'' patients that should more appropriately be discharged for care in a lower cost setting. The commenter noted that the prospective payment system for IRFs established an outlier target of 3 percent and the outlier target under the acute care hospital inpatient prospective payment system is established between 5 and 6 percent of aggregate payments. The commenter recommended that a more appropriate outlier target for LTCHs would be one that is reduced to 3 percent.

Response: As we explained in the preamble of the proposed rule (67 FR 13468–13469), a smaller outlier target within the range of 5 to 6 percent was evaluated, but statistically, it did not perform as well as the higher outlier target of 8 percent, since the payment-to-cost ratios were significantly higher with the 8-percent outlier target. In addition, an outlier target of only 5 percent would increase the fixed-loss amount to approximately $45,000, representing a large ''loss'' to the LTCH before an outlier payment would be made. Such a high fixed-loss amount would seem to engender the financial hardship that a high-cost outlier policy is intended to mitigate. An outlier target of 8 percent takes a more conservative approach in helping to minimize the financial risk across all LTCHs. Further, the IRF prospective payment system is not analogous to the LTCH prospective payment system in this respect since the cases at IRFs are significantly more homogeneous than those treated at LTCHs. However, as with the other payment policies under the LTCH prospective payment system, we intend to review the high-cost outlier policy when more data on LTCH payments become available, and may propose changes in this policy in the future if they are warranted.

Comment: One commenter stated that the outlier payment calculation is skewed because of the number of ''new'' facilities involved. The commenter took issue with our estimate of outliers based on cost-to-charge ratios derived from the initial cost reporting periods of the ''new'' LTCHs, where costs are typically inflated due to the establishment of the TEFRA base rates and was concerned that the LTCH prospective payment system, including outlier payments, was based on those ''inflated'' costs. In order to mitigate the problems that arise from reliance on data from ''new'' LTCHs, the commenter recommended that we reexamine the relevant data for all LTCHs and devise a methodology that takes into account the large number of ''new'' LTCHs included in the sample and the abnormally high costs associated with ''new'' LTCHs.

Response: Under § 413.40, a hospital that is excluded from the inpatient prospective payment system is paid on a reasonable cost basis subject to a target amount per discharge. A ''new'' LTCH's target amount is based on the costs incurred in the first full 12 month cost reporting period. In order to establish higher target amounts under the TEFRA payment methodology, ''new'' LTCHs have an incentive to maximize their costs in their TEFRA base periods. As a result, as the commenter indicated, cost data from the initial years of a ''new'' LTCH may have been inflated since those costs are the basis for the hospital's TEFRA target amount in subsequent years. While we are aware that there are some limitations to the data, the data that we used were the best available at that time. In future years, the outlier threshold will be reevaluated as more data on LTCHs become available and behaviors change. However, the current data show that an outlier target of 8 percent is statistically and empirically appropriate as a means of providing LTCHs with additional protection against unusually costly cases.

Comment: Some commenters explained that when they applied the proposed outlier calculation rules to the actual MedPAR 2000 file, the total

amount of payments for high-cost outlier cases appeared to be more than 8 percent of the total payment amount. The commenters requested that we explain the methodology used to calculate the 8 percent outlier target and why the commenters' results may differ from those of CMS'. The commenters also asked if the 80-percent reduction in high-cost outliers was considered in the outlier payment amounts shown in the rate-setting file (posted on the CMS website).

Response: When we simulated the LTC–DRG relative weights and the high-cost outlier payments under the LTCH prospective payment system for the proposed rule, we used the best data available from a total of 251 LTCHs for which MedPAR (claims) case-mix data and cost-to-charge ratios were available. For the proposed rule, when all 251 LTCHs were used, an outlier target of 8 percent (8.00007) resulted. However, for the proposed rule, we only had reliable data to estimate total TEFRA payments for 211 LTCHs. Therefore, in calculating a base rate that would result in total LTCH prospective payment system payments being budget neutral to total payments under the TEFRA methodology, in the proposed rule, we used only 211 LTCHs (as shown in the rate-setting file on the CMS website).

As we discuss in greater detail in section X.K.2.a. of this preamble, for this final rule, we used the data from all LTCHs (except for LTCHs that are also all-inclusive rate providers or reimbursed in accordance with demonstration projects (see section X.K.2.a. of this preamble)) for which we had claims data and cost-to-charge ratios to determine the high cost outlier threshold. Therefore, from the data that we had available for this final rule, we used data from 246 LTCHs in determining the final FY 2003 fixed-loss amount of $24,450. However, as explained above and in further detail in section X.K.2.a. of this preamble, for this final rule, we could only use the data from 194 LTCHs for which we had data available to estimate total TEFRA payments in the determination of the final budget neutral base rate.

There may be numerous reasons why the commenters' payment simulation differed from our simulations, and without knowing exactly how the commenters simulated the payments or what data were included, we cannot pinpoint a cause of the variation. If the commenters used the rate-setting file posted on our website as the basis for their simulations, their results should have matched the results from CMS. We note, however, that a simulation of outlier payments using only 211 LTCHs would result in an outlier target of approximately 7.8 percent. In addition, the 80-percent marginal cost factor was also included in the outlier payment amounts shown in the rate-setting file.

Comment: One commenter stated that the proposed fixed-loss amount of $29,852 is unfair to LTCHs since short-term acute care hospitals only have to reach a loss of around $19,000 in order to qualify for an additional outlier payment.

Response: The commenter has mistakenly attributed a fixed-loss amount of approximately $19,000 to acute care (short-term) hospitals. For FY 2001, under the acute care hospital inpatient prospective payment system, the fixed-loss amount was $17,550; for FY 2002, the fixed-loss amount is $21,025. However, the fixed-loss amount for FY 2003 for acute care hospitals is $33,560 (67 FR 50124, August 1, 2002), which is actually higher than the proposed fixed-loss amount of $29,852 ($24,450 in this final rule) for FY 2003 for LTCHs. Thus, contrary to the commenter's assertion that the fixed-loss amount for LTCHs is unfair relative to the outlier fixed-loss amount for acute care hospitals, LTCHs would incur less cost than acute care hospitals before qualifying for additional outlier payments.

Comment: One commenter requested that we revise proposed § 412.525 to specifically state that payments made for high-cost outliers are not subject to retroactive adjustments for changes made to a provider's hospital-specific cost-to-charge ratio.

Response: Under the proposed § 412.525, the additional outlier payment equals 80 percent of the difference between the estimated cost of the patient case and the sum of the adjusted Federal prospective payment for the LTC–DRG and the fixed-loss amount. The estimated cost of a case is calculated by multiplying the overall hospital cost-to-charge ratio by the Medicare allowable covered charge. As implied by the commenter, although the outlier payment is based, in part, on the estimated cost of a case, no retroactive adjustments are made to the outlier payments upon cost report settlement to account for the differences between the estimated cost-to-charge ratios and the actual cost-to-charge ratios. This is standard operating policy for fiscal intermediaries for all prospective payment systems because adjustments for individual high-cost outliers would be costly to Medicare as well as administratively burdensome. We are adding this clarification as § 412.525(a) in this final rule. In addition, we are modifying § 412.525(a) to clarify that the estimated cost of a patient's care is determined by multiplying the hospital-specific cost-to-charge ratio by the Medicare allowable covered charge.

Provisions of the final rule. After analysis of public comments on our proposed policy on additional payments for high-cost outlier cases (§ 412.525(a)), we have found that the proposed policy continues to be supported by appropriate data and are, therefore, adopting it as final. Therefore, we will make additional outlier payments to LTCHs for any discharges where the estimated cost for a patient case exceeds the sum of adjusted LTCH prospective payment for the LTC–DRG and a fixed-loss amount. We have set the outlier target at 8 percent of total Medicare payments to LTCHs using a total of 246 LTCHs for which we have MedPAR data. The final fixed-loss amount for FY 2003 is $24,450. For each fiscal year we will determine a fixed-loss amount, that is, the maximum loss that a LTCH can incur under the prospective payment system for a case with unusually high costs before the hospital will receive any additional payments. The fixed loss amount will result in estimated total outlier payments being equal to 8 percent of projected total LTCH prospective payment system payments. We will pay outlier cases 80 percent of the difference between the estimated cost of the patient case and the outlier threshold (the sum of the adjusted Federal prospective payment for the LTC–DRG prospective payment and the fixed-loss amount). In response to a comment, we are revising § 412.525(a) to clarify that no retroactive adjustment will be made to the outlier payment upon cost report settlement to account for differences between the estimated cost-to-charge ratios and the actual cost-to-charge ratios for outlier cases. We are also modifying § 412.525(a) to clarify that the estimated cost of a patient case is determined by multiplying the hospital-specific cost-to-charge ratio by the Medicare allowable covered charge.

In addition, while we were developing the final short-stay outlier policy as described in section X.C. of this preamble, we became aware that, under some rare circumstances, a LTCH discharge could qualify as a short-stay outlier case and also as a high-cost outlier case. In such a scenario, a patient could be hospitalized for less than five-sixths of the geometric average length of stay for the specific LTC–DRG, and yet incur extraordinarily high treatment costs. If the costs exceeded the outlier threshold (that is, the short-stay outlier payment plus the fixed-loss amount), the discharge would be eligible for payment as a high-cost outlier. The

payment would be based on 80 percent of the difference between the estimated cost of the case plus the outlier threshold (the sum of the fixed-loss amount of $24,450 for FY 2003 and the amount paid under the short stay outlier policy).

K. Calculation of the Standard Federal Payment Rate

1. Overview of the Development of the Standard Payment Rate

Section 123(a)(1) of Public Law 106–113 requires that the prospective payment system for LTCHs maintain budget neutrality. Therefore, we will calculate the standard Federal rate by setting total estimated prospective payment system payments equal to estimated payments that would have been made under the TEFRA methodology if the prospective payment system for LTCH were not implemented as described in this final rule. In accordance with section 307(a)(2) of the BIPA, the increases to the hospital-specific target amounts and cap on the target amounts for LTCHs for FY 2002 provided for by section 307(a)(1) of the BIPA and the enhanced bonus payments for LTCHs for FY 2001 and FY 2002 provided for by section 122 of the BBRA were not taken into account in the development of the prospective payment system for LTCHs.

The methodology for determining the standard Federal payment rate under the LTCH prospective payment system is described in further detail below.

2. Development of the Standard Federal Payment Rate

a. Data Sources

In this final rule, the data sources that we used to calculate the final unadjusted standard Federal payment rate include cost report data from FYs 1996 through 1999 and FY 2001 Medicare claims data from the March 2002 update of the MedPAR files since these data were the most recently available complete data for LTCHs. We used data from 194 LTCHs in this final rule to calculate the final standard Federal payment rate. We updated the cost report data for each LTCH to the midpoint of FY 2003 using an inflation factor based on the historical relationship of each hospital's costs and their target amounts (see section X.K.2.b. of this preamble). The FY 1996 cost report data were used to determine each LTCH's update for FY 1999, and the FY 1997 cost report data were used to determine the update for FY 2000. The FY 1998 cost report data were used to determine the update for FY 2001, and the FY 1999 cost report data were used to determine the update for FY 2002. For this final rule, we were unable to estimate payments under the current payment system for some LTCHs because cost report data were unavailable.

For this final rule, we obtained the most recent available payment amounts for hospitals and have used these data to construct the standard Federal payment rates in this final rule, as explained below. As we indicated in the proposed rule, we examined the extent to which certain LTCHs (new LTCHs, for example) were not included in the data used to determine the proposed standard Federal payment rate, but were unable to determine an appropriate adjustment to better reflect total estimated payments for those LTCHs under the TEFRA payments system. As described above, for this final rule, we used the most recently available complete data for LTCHs, that is, cost report data from the March 2002 update of HCRIS and claims data from the March 2002 update of the MedPAR files. As we explain below, based on concerns with the data used to develop the proposed LTCH prospective payment system, we have excluded the data from 17 all-inclusive rate providers in the development of the final LTCH payment rates.

Comment: Several commenters expressed concern about the quality of the data behind policy choices for the prospective payment system and urged CMS to revisit these policies once better data has been gathered.

Response: In designing the LTCH prospective payment system, we were required by BIPA to use ''the most recently available hospital discharge data'' for our policy determinations. The particular data sets we used are detailed in this section and additional factors that influenced our choices are noted in our discussion in section X.K.2. of this final rule. As we state previously, we used the best available data and we have confidence that our policies effectively satisfy the statutory mandates under Public Law 106–113 and Public Law 106–554. We will be monitoring and evaluating the new system and are prepared to revisit and revise these policies in the future, if warranted.

Comment: One commenter stated that we used cost report and MedPAR data from only 222 LTCHs to set the proposed rates, while as of November 2001, there were 270 LTCHs in existence. The commenter also stated that it was unclear how many LTCHs we used in our analysis since 211 LTCHs were included in the rate-setting file posted on the our website, and there were 222 LTCHs included in the adjustment (regression) file. The commenter contended that if we did in fact use the data from all 222 LTCHs, this means that we have improperly denied the public access to the data we used in setting the proposed rates.

Response: The data we used for the proposed rates were the best data available to us at that time as required by section 307 of Public Law 106–554. All of the data we used to calculate the proposed rates and to analyze proposed adjustments were posted on our website and were accessible to the public. The number of LTCHs that we included in each file was dependent upon the amount of data that we had available for each hospital and the data needed for the specific calculation. Many LTCHs had incomplete records in either the MedPAR or HCRIS files, or both. When we calculated the relative weights and estimated high cost outlier payments under the LTCH prospective payment system for the proposed rule, we used the best available data at that time from a total of 251 LTCHs, since we had MedPAR (claims) data and cost-to-charge ratios available for these 251 LTCHs. However, we only had complete data for 211 LTCHs to estimate total payments under the TEFRA payment system. Therefore, in calculating a proposed budget neutral Federal rate, which would result in total LTCH prospective payment system payments estimated to equal total payments that would have been made under the TEFRA payment system, we were only able to use data from 211 LTCHs. Thus, the rate-setting file posted on our website includes only 211 LTCHs. Because total TEFRA payments are not a factor used in the regression analysis used to examine potential payment system adjustments in the proposed rule, we were able to include data from 11 more hospitals (for a total of 222) in the adjustment file posted on our website.

Based on the concern expressed by a number of commenters regarding the data used to develop the proposed LTCH prospective payment system, we reviewed the LTCH data that we used in our proposed rule and have reevaluated the inclusion of data from certain types of LTCHs. Specifically, in this final rule, we have not included data from LTCHs that are also all-inclusive rate providers (AIRPs) and LTCHs that are reimbursed in accordance with demonstration projects authorized under section 402(a) of Public Law 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Public Law 92–603 (42 U.S.C. 395b–1).

Patient charges and costs reported by AIRPs are computed differently from those of other providers. Hospitals with

an ''all-inclusive rate'' charge structure combine routine, ancillary, and capital costs into one global patient per diem charge and do not report Medicare patient charges on their cost reports. The absence of a charge structure precludes the normal allocation of costs to the Medicare program for ancillary services, because Medicare patients' charges cannot be accumulated. Thus, the charge data from the MedPAR files and the cost data from the cost reports do not reflect Medicare costs and related resource use in the same manner as it does for the majority of other Medicare providers.

We do not believe that either the charges or the costs reported by LTCHS that are also AIRPs are at all comparable to the data reported for other LTCHs and, therefore, have the potential to inappropriately skew relative weight determinations, regression analyses, and rate calculations for the entire LTCH prospective payment system. As a result, in order to prevent potential distortion to the LTCH prospective payment system, we have decided to exclude the data from the 17 AIRPs in the development of the LTCH prospective payment system in this final rule. Thus, only data from LTCHs with more detailed charge and cost data were used in assessing the validity of potential payment adjustments and in the determination of the final LTC-DRG relative weights and Federal rate that appear in this final rule. Furthermore, excluding the AIRPs' data is consistent with the methodology used in establishing the IRF prospective payment system (see 66 FR 41351 (August 7, 2001)).

We have also excluded the data from the 3 LTCHs that are reimbursed in accordance with demonstration projects authorized under section 402(a) of Public Law 90–248 (42 U.S.C. 1395b—1) or section 222(a) of Public Law 92–603 (42 U.S.C. 1395b–1), since these LTCHs are not subject to the LTCH prospective payment system.

After considering the commenters' concern that, currently, there are significantly more LTCHs in existence than were used in the development of the proposed LTCH prospective payment system, for this final rule, we are clarifying that for both the proposed and final rules, we used all LTCHs for which we had MedPAR (claims) data and cost-to-charge ratios available (except for this final rule we excluded LTCHs that are AIRPs or reimbursed in accordance with demonstration projects), for a total of 246 LTCHs, to calculate the relative weights. For this final rule, we used the most recently available claims data from the March 2002 update of the FY 2001 MedPAR files and updated LTCH cost and TEFRA payment information from the March 2002 update of HCRIS. Accordingly, we included the data for 198 LTCHs in the regression analyses and the data for 194 LTCHs in calculating the final FY 2003 Federal rate. These are fewer than the number of LTCHs that were used in the proposed rule since we have excluded for this final rule LTCHs that are AIRPs or reimbursed in accordance with demonstration projects.

Comment: One commenter indicated that five of its LTCHs were not included in the rate-setting file posted on our website. The commenter wanted to know why these facilities were excluded and what the impact of excluding them was on the proposed weights and total payment calculations.

Response: The LTCHs indicated by the commenter were omitted from the rate-setting file on the website because they did not have sufficient cost report information in HCRIS to estimate payments under the TEFRA payment system, and consequently, we could not include them in the calculation of a budget neutral rate. Since we had claims data for these 5 providers and since the relative weights were determined using claims data from the MedPAR files, these LTCHs were included in the determination of the relative weights. However, since we needed specific cost report data to estimate TEFRA payments and since we did not have specific cost report information available for these providers, we are not able to determine the effect this information would have had on the proposed or final payment calculations.

Comment: One commenter noticed that 39 facilities observed in the MedPAR FY 2000 files were excluded from the analysis used to create the rate-setting file posted on our website. The commenter assumed these facilities are excluded from the summation of total payments in the rate-setting file, and asked what the impact would be on budget neutrality and total payments if these additional hospitals would be included.

Response: As we explained above, we were only able to include those LTCHs in our analysis from which we had sufficient cost report data to estimate payments under the TEFRA payment system. Since publication of the proposed rule, we have received some additional cost reports, which we have included in our analysis for this final rule. Since we cannot determine what the costs and payments were under the TEFRA payment system without cost report data for the LTCHs for which we do not have sufficient cost data, we also cannot determine what the impact would be on the standard Federal rate if these facilities would have been included in our analysis.

Comment: Some commenters wanted to know why their hospitals' internal cost report data did not match the data in our rate-setting file.

Response: The commenters did not provide specific information about their hospitals' internal cost report data that did not match the data posted on our website. Therefore, we cannot determine a particular reason for the variation between our cost report data in HCRIS and the commenters' internal cost report data. We accessed our cost report information from the June 2001 update of HCRIS for the most recent available cost reporting period (either FYs 1998 or 1999). The commenters might have been using settled cost report data, while the data in the cost reports that were available to us at the time of our calculations for the proposed rule were data from as-filed cost reports. We also note that although the cost report data on the rate-setting file were from FYs 1998 or 1999, the data were updated to FY 2003 using the excluded hospital market basket.

Comment: One commenter requested that we provide detailed computations, by patient, in the rate-setting file. Another commenter suggested that the rate-setting file should show the impact of the proposed interrupted stay policy.

Response: In order to show patient-specific computations and the impact of the proposed interrupted stay policy, we would have needed patient-specific cost data. Since the Medicare cost reports do not provide patient-specific statistics, we are not able to demonstrate the impact of the interrupted stay policy.

Comment: One commenter wanted to know which rate-setting file variables reflect updated cost report information beyond FY 1998 and FY 1999 and how this updated cost report information was applied in the rate-setting formulas.

Response: As we stated in the March 22, 2002 proposed rule (67 FR 13470), all cost and payment information is inflated to FY 2003. Thus, the following variables are already inflated to FY 2003: ''Operating Cost Per Case'', ''Capital Cost Per Case'', ''TEFRA Payment Per Case'', ''Total TEFRA Payment'', ''PPS Payments (Excluding Outlier Payments)'', ''Outlier Payments'', and ''Total PPS Payments.'' These cost and payment variables were used to estimate TEFRA payments used to calculate a budget neutral rate.

Comment: A commenter asked if the ''outlier payments'' variable in the rate-setting file refers to high-cost outlier

payments only. The commenter also asked if the cost-to-charge ratio applied to charges from the MedPAR data and if the outlier costs were determined per case.

Response: The ''outlier payments'' variable in the rate-setting file refers to high-cost outlier payments only (as described in section X.J.6. of this preamble). We applied the cost-to-charge ratio to the charges for each case from the MedPAR data to determine the outlier costs for each case.

As we discussed in the March 22, 2002 proposed rule (67 FR 13469), in determining the prospective payment rates for LTCHs, we had significant concerns about the integrity of some of the cost report data in HCRIS. Specifically, we were concerned about data from cost reports submitted by a hospital chain that is the owner of approximately 20 percent of LTCHs nationwide that arose from a ''qui tam'' action filed by the U.S. Department of Justice (DOJ) in July 1999. This action alleged, among other claims, that the hospitals inflated both cost and charge data on Medicare hospital cost reports filed from FYs 1994 through 1999. On March 16, 2001, the hospital chain agreed to pay approximately $339 million to settle claims arising from 11 separate actions. Based upon audits and projections performed by Medicare's fiscal intermediary under the direction of our Office of Financial Management, the Medicare LTCH action was allocated $178 million of this settlement.

Under the terms of the agreement, Medicare cost reports from the years in question were not reopened and audited. However, the fiscal intermediary was able to estimate the effect on the Medicare cost reports for 1995, 1996, and 1997. Then a random sample of Medicare cost reports from 1998 and 1999 were reviewed to verify the projected impact for those years and a settlement figure was determined for FY 1995 through FY 1999. Therefore, in order to avoid the negative impact those providers' data may otherwise have on the integrity of the data, as we did in the proposed rule, we are basing our final standard Federal rate on a factor determined by our Office of the Actuary to adjust the costs reported in those affected FY 1998 and FY 1999 cost reports. This factor was derived by determining the ratio of the portion of the settlement amount described above attributable to each affected LTCH to the Medicare payments received by each affected LTCH during the period covered by the settlement.

Comment: Some commenters asked how the qui tam adjustment was calculated.

Response: If the affected LTCH had a cost report for a period after the settlement, no adjustment was made. An adjustment was made only if that LTCH's latest cost report was for a period covered by the settlement. The adjustment for that LTCH was equal to the amount of the adjustment attributable to that LTCH, divided by the amount of payments that LTCH received for that period according to the cost report. This ratio was then used to reduce payments in FY 2003 to be included in the calculation of the Federal rate and budget neutrality. When the ratio was calculated for the proposed rule, it was possible that a particular hospital may have had settlement data for a cost reporting period after FY 1999. However, cost report data for such a LTCH were not available to us because we did not have HCRIS files for any fiscal year after FY 1999 at that time. Thus, such a LTCH's payments under the TEFRA system could not be calculated with data more recent than FY 1999. In maintaining budget neutrality, we used the most recent year's data available (either FY 1998 or FY 1999). Thus, since the cost report data was overstated as specified in the qui tam settlement, we modified the cost report data to correct for the effects of the settlement.

Comment: A commenter stated that the settlement amount allocated to Medicare LTCH action peaked in FY 1998 at $47 million and decreased to $27 million in FY 1999 and $0 in FY 2000 and going forward. The commenter stated that it appears from the ratesetting file that a downward $47 million adjustment was applied to the updated FY 2003 payment amount for the affected hospitals. The commenter believed a better methodology would be to apply a $27 million reduction to the FY 1999 actual costs for the affected hospitals and trend the actual adjusted amounts forward rather than making an adjustment to the updated amount in FY 2003.

Response: For the proposed rule, if we did not have cost report data for a period after the settlement, the qui tam adjustment was applied since the most recent cost report that we had available to use for estimating FY 2003 payments under the TEFRA payment system was for a period covered by the settlement. The amount paid was adjusted by a factor equal to the amount of the settlement attributable to that LTCH during that specific cost reporting period divided by the total payments received by that LTCH during that cost reporting period. Since the latest available cost report data (either FY 1998 or FY 1999) was used as a base to project future costs and payments under the TEFRA payment system, we believe that only the payment information for those affected LTCHs for which we had to use questionable cost report data should be adjusted. As we stated in proposed rule (67 FR 13470), where the latest available cost report for a LTCH was for FY 1999, we adjusted the costs reported in the affected LTCH's FY 1999 cost report. Thus, as the commenter stated, the adjustment was limited to the $27 million reduction and that adjusted FY 1999 data was trended forward to FY 2003 to estimate payments under the TEFRA payment system for FY 2003 used in the budget-neutrality calculations.

b. Update the latest cost report data to the midpoint of FY 2003.

For both the proposed rule and this final rule, and consistent with the methodology used under the IRF prospective payment system (§ 412.624(c)), we are updating (§ 412.523(c)(2)), each LTCH's cost per discharge to the midpoint of FY 2003, using the weighted average of the applicable percentage increases to the TEFRA target amounts for FYs 1999 through 2002 (in accordance with § 413.40(c)(3)(vii)) and the full market basket percentage increase for FY 2003. For FYs 1999 through 2002, in this final rule, we determined the appropriate update factor for each hospital by using the methodology described below:

- For hospitals with costs that equal or exceed their target amounts by 10 percent or more for the most recent cost reporting period for which information is available, the update factor is the market basket percentage increase.
- For hospitals that exceed their target amounts by less than 10 percent, the update factor is equal to the market basket minus 0.25 percentage points for each percentage point by which operating costs are less than 10 percent over the target (but in no case less than 0).
- For hospitals that are at or below their target amounts, but exceed two-thirds of the target amounts, the update factor is the market basket minus 2.5 percentage points (but in no case less than 0).
- For hospitals that do not exceed two-thirds of their target amounts, the update factor is 0 percent.

For FY 2003, we used the most recent estimate of the percentage increase projected by the excluded hospital market basket index.

Comment: Some commenters questioned CMS's methodology for applying the market basket percentage to update the cost report data from FY 1996 through FY 1999 to the midpoint

of FY 2003. Specifically, the commenters were concerned that the bonus and penalty payments under the TEFRA payment system methodology (§ 413.40(d)(2) and (3)) were not accounted for when applying the market basket update. The commenters requested that CMS explain how it accounts for cost growth for hospitals whose costs are below the TEFRA caps.

Response: We proposed to update each LTCH's cost per discharge to the midpoint of FY 2003, using the weighted average of the applicable percentage increases to the TEFRA target amounts for FYs 1999 through 2002 (in accordance with § 413.40(c)(3)(vii)) and the full market basket percentage increase for FY 2003. We also updated each LTCH's target amount using the rate-of-increase percentage as described in § 413.40(b)(3). However, within each year from FY 1999 through FY 2003, we compared each LTCH's costs to its respective target amount in order to determine the payment to each LTCH considering the rules for bonus and penalty payments under § 413.40(d)(2) and (3). Therefore, although we did not state this explicitly in the proposed rule, we did account for the bonus and penalty payments under the TEFRA payment system methodology at § 413.40(d)(2) and (3) and have done so in our analysis for this final rule, as well. We note that this was the same methodology that was applied under the IRF prospective payment system.

Comment: Some commenters stated that there should be annual market basket updates after the first year, and calculated in the first year.

Response: In the March 22, 2002 proposed rule, we proposed to update each LTCH's cost per discharge to the midpoint of FY 2003, using the weighted average of the applicable percentage increases to the TEFRA target amounts for FYs 1999 through 2002 (in accordance with § 413.40(c)(3)(vii)) and the full market basket percentage increase for FY 2003. We updated each LTCH's target amount using the rate-of-increase percentage as described in § 413.40(b)(3). In accordance with § 412.523(c)(3)(ii), and as we proposed, for fiscal years after FY 2003 the LTCH prospective payment system Federal rate will be the previous fiscal year's Federal rate updated by the most recent estimate of the LTCH prospective payment system market basket (that is, the excluded hospital with capital market basket).

c. Estimate total payments under the current (TEFRA) payment system.

We estimated payments for inpatient operating services under the TEFRA system using the following methodology:

Step 1: Determine each LTCH's hospital-specific target amount.

The hospital-specific target amount for a LTCH is calculated based on the hospital's allowable inpatient operating cost per discharge for the hospital's base period, excluding capital-related, nonphysician anesthetist, and medical education costs. This target amount is then updated using a rate-of-increase percentage as described in § 413.40(b)(3). For FYs 1998 through 2002, there are two national caps on the payment amounts for LTCHs. Under § 413.40(c)(4)(iii), a LTCH's hospital-specific target is the lower of its net allowable base-year costs per discharge increased by the applicable update factors or the cap for the applicable cost reporting period. In determining each LTCH's hospital-specific target amount, we use the FY 2002 cap amounts published in the hospital inpatient prospective payment system August 1, 2001 final rule (66 FR 39915–39916), adjusted in accordance with section 307(a)(2) of Public Law 106–554 by removing the 2-percent increase in the cap for existing LTCHs required by section 307(a)(1) of Public Law 106–554. For existing hospitals (that is, LTCHs paid as an excluded hospital before October 1, 1997), the applicable cap amount for FY 2002 is $30,783 for the labor-related share adjusted by the applicable geographic wage index and added to $12,238 for the nonlabor-related share. For current ''new'' hospitals (that is, LTCHs first paid as an excluded hospital on or after October 1, 1997), the cap amount applicable for FY 2002 is $16,701 for the labor-related share adjusted by the applicable geographic wage index and added to $6,640 for the nonlabor-related share. These capped amounts are inflated to the midpoint of FY 2003 by applying the excluded hospital operating market basket.

As explained above, we note that, in accordance with section 307(a)(2) of the BIPA, in estimating total payments to LTCHs under the current payment system, the increase to the hospital target amounts and caps on the target amounts for LTCHs effective from October 1, 2001 through September 30, 2002, provided for under section 307(a)(1) of the BIPA were not to be taken into account. Furthermore, as we discussed previously in this section, as a result of a qui tam action involving some LTCHs, we adjusted such affected LTCHs' cost report data by a factor equal to the amount of the settlement attributable to that LTCH during that specific cost reporting period divided by the total payments received by that LTCH during that cost reporting period.

Step 2: Determine each LTCH's payment amount for inpatient operating services.

Under the TEFRA system, a LTCH's payment amount for inpatient operating services is the lower of—

- The hospital-specific target amount (subject to the application of the cap as determined in Step 1) times the number of Medicare discharges (the ceiling); or
- The hospital average inpatient operating cost per case times the number of Medicare discharges.

In addition, under the TEFRA system, payments may include a bonus or relief payment, as follows:

- For LTCHs whose net inpatient operating costs are lower than or equal to the ceiling, payment is the lower of either the net inpatient operating costs plus 15 percent of the difference between the inpatient operating costs and the ceiling or the net inpatient operating costs plus 2 percent of the ceiling.
- For LTCHs whose net inpatient operating costs are greater than the ceiling, but less than 110 percent of the ceiling, payment is the ceiling.
- For LTCHs whose net inpatient operating costs are greater than 110 percent of the ceiling, payment is the ceiling plus the lower of 50 percent of the difference between the 110 percent of the ceiling and the net inpatient operating costs or 10 percent of the ceiling.

Comment: A commenter asked how the average operating costs per case were calculated from the cost report variables.

Response: Using data from the cost report, we determined the average operating cost per case by dividing total Medicare inpatient operating costs for the cost reporting period from worksheet D–1, adjusted by the qui tam factor, if applicable, by the total number of Medicare discharges for the same cost reporting period from worksheet S–3.

Comment: A commenter noted that operating costs are described as being ''estimated operating cost per case based on cost report data trended forward to FY 2003 using historical cost report data,'' and asked for an explanation of the term ''trended forward''. The commenter also asked what calculation was used to ''trend forward,'' and whether the operating costs calculated using total operating cost from the FY 1998 and FY 1999 cost reports were multiplied by the inflation factor of 3.6 percent.

Response: The term ''trended forward'' means that the FY 1998 or FY

1999 costs were multiplied by the market basket update of 3.6 percent to inflate those costs to FY 2003.

Further, under the TEFRA system, excluded hospitals and units, including LTCHs, may be eligible for continuous improvement bonus payments as described under § 413.40(d)(4). As explained above, in accordance with section 307(a)(2) of Public Law 106–554, the enhancement of continuous improvement bonus payments for LTCHs, effective for cost reporting periods beginning on or after October 1, 2000 and before September 30, 2002, and provided for under section 122 of Public Law 106–113, were not to be taken into account in estimating total payments to LTCHs under the current TEFRA system.

Comment: A commenter questioned the exclusion of the continuous improvement bonus payments when computing budget neutrality since these bonus payments have been a part of the TEFRA payment methodology.

Response: Under section 1886(b)(2) of the Act, a hospital that has been excluded from the inpatient prospective payment system for at least three full cost reporting periods prior to the subject period and whose operating costs per discharge for the subject period are below the lower of its target amount, trended costs, or expected costs for the subject period, is eligible for a continuous improvement bonus payment. The statute defines expected costs as the lesser of the operating costs or the target amount for the previous cost reporting period updated by the market basket. The amount of the continuous improvement bonus payment is equal to the lesser of—(1) 50 percent of the amount by which operating costs were less than the expected costs for the period, or (2) one percent of the ceiling.

In the determination of continuous improvement bonus payments in accordance with § 413.40(d)(5), we compare actual operating costs incurred in the current period with the expected costs that are based on cost incurred in the prior period. Since the latest cost report information available is from FY 1999 (and in some cases FY 1998), it was necessary for us to use those reported costs and the applicable market basket increases to estimate both the costs incurred in the current period (FY 2003) and the costs incurred in the prior period (FY 2002). We used the same cost data and market basket increases to estimate current year (FY 2003) operating costs and expected costs updated to FY 2003. Therefore, the operating costs in FY 2003 would always be equal to (never less than) the expected costs for FY 2003. In the continuous improvement bonus calculation, we subtract current operating costs from expected costs and multiply this difference by a percentage as specified in § 413.40(d)(5). Accordingly, this would result in no continuous improvement bonus for these hospitals in FY 2003. Therefore, continuous improvement bonus payments are not considered in determining budget neutrality.

Step 3: Determine each LTCH's payment for capital-related costs.

Under the TEFRA system, in accordance with section 1886(g) of the Act, Medicare allowable capital costs are paid on a reasonable cost basis. Thus, each LTCH's payment for capital-related costs will be taken directly from the cost report and updated for inflation using the excluded hospital market basket, consistent with the methodology used under the IRF prospective payment system. As we discussed previously in this section, as a result of the qui tam action involving some LTCHs, we adjusted those affected LTCHs' cost report data by a factor equal to the amount of the settlement attributable to that LTCH during that specific cost reporting period divided by the total payments received by that LTCH during that cost reporting period.

Comment: Some commenters stated that there is a discrepancy between the capital-related costs per discharge reported in the LTCH rate-setting files posted on the CMS website, and the capital costs reported on the Medicare cost reports that were used to develop the proposed payment rates. The commenters asserted that while we have stated in Part 8.2 of the ''Questions and Answers'' posted on the website that the capital-related costs were identified from the Minimum Data Sets (MDS) using worksheet D, Part I for routine capital costs, and worksheet D, Part II for ancillary capital costs, some hospitals' capital-related routine service costs were instead reported on worksheet D–1, Part II (column 1, lines 50, 51, and 52). Since none of these hospitals had teaching programs and none were subject to the qui tam adjustment, these costs were entirely capital-related. The commenter stated that this discrepancy on the MDS seems to have understated capital-related costs for 64 of the 211 LTCHs used in the proposed rule in the calculation of the proposed standard Federal rate by approximately 2 percent (resulting in an estimated increase in base payments of $40 million).

Response: We have reviewed the lines on Worksheet D, Parts I and II, and Worksheet D–1, Part II on the HCRIS MDS and have found that, in fact, there are a number of LTCHs that have not reported capital-related costs on Worksheets D, Parts I and II, but have reported these costs on Worksheet D–1, Part II, column 1, lines 50, 51, and 52. Therefore, the commenter is correct in assuming that since only capital-related costs from Worksheets D, Parts I and II were identified in our base rate calculations, capital-related costs were underestimated in the calculation of the standard Federal rate. These costs were originally excluded from our calculations because these hospitals did not properly report these costs on their cost reports. The cost report instructions direct hospitals, including hospitals excluded from the acute care hospital inpatient prospective payment system, to report their capital-related costs, not only on Worksheet D–1, Part II, but also on Worksheets D, Parts I and II. However, because we have been made aware that LTCHs have reported capital-related costs on Worksheet D–1, Part II, we have revised our rate calculations to account for these costs. Thus, for this final rule, we determined capital-related costs using data from Worksheets D, Parts I and II and Worksheet D–1, Part II.

Comment: A commenter asked how the average capital costs per case were calculated from the cost report variables for the proposed rule.

Response: Similar to the calculation of average operating costs per case discussed in step 2 above, we determined the average capital cost per case by dividing total Medicare inpatient capital costs for the same cost reporting period from worksheets D, Part I and Part II and Worksheet D–1, Part II by the total number of Medicare discharges for the cost reporting period from worksheet S–3.

Step 4: Determine each LTCH's average total (operating and capital) payment per case under the current (TEFRA) payment system.

In the proposed rule and for this final rule, once estimated payments for inpatient operating costs are determined (including bonus and relief payments, as appropriate), we added the operating payments and capital payments together to determine each LTCH's estimated total payments under the current (TEFRA) payment system. We then divide each LTCH's estimated total TEFRA payments by the corresponding number of Medicare discharges from the cost report to determine what each LTCH's average total payment per case would be under the current (TEFRA) payment system.

Step 5: Determine a case weighted average payment under the current (TEFRA) payment system.

For both the proposed rule and this final rule, we determined each LTCH's average payment under the current (TEFRA) system weighted for its number of cases in the March 2002 update of the FY 2001 MedPAR file by multiplying its average total payment per case from step 4 by its number of cases in the FY 2001 MedPAR file.

Step 6: Estimate total (MedPAR) weighted payments under the current (TEFRA) payment system.

In the proposed rule and for this final rule, we estimated total weighted payments under the current (TEFRA) payment system by summing each LTCH's (MedPAR) weighted payments under the current (TEFRA) payment system (from step 5). In addition, we adjusted the estimated total weighted payments to reflect the estimated portion of additional outlier payments under § 412.525(a). (This is consistent with not including outlier payments in estimating payments under the prospective payment system in Step e. below.) This total is the numerator in the calculation of a budget neutrality adjustment.

d. Calculate the average weighted payment per discharge amount.

Once estimated total payments under the current payment system are calculated, we calculated an average per discharge payment amount weighted by the number of Medicare discharges under the current payment system. This is done by first determining the average payment per discharge amount under the current payment system for each LTCH. Cost report data is used to calculate each LTCH's average payment per discharge by dividing the number of discharges into the total payments. As explained in section X.K.2.a. of this final rule, if applicable, the LTCH's payment per discharge is adjusted consistent with the terms of the DOJ settlement agreement.

Next, we determined the weighted average per discharge payment amount by multiplying each LTCH's average payment per discharge amount from the cost report by the number of discharges from the Medicare claims data in the FY 2001 MedPAR files. Then we added the amounts for all LTCHs and divided by the total number of discharges from the Medicare claims in the FY 2001 MedPAR files to derive a weighted average payment per discharge.

e. Estimate payments under the prospective payment system without a budget neutrality adjustment.

Payments under the payment system are then estimated without a budget neutrality adjustment. In the proposed rule (67 FR 13471), we stated that to do this, we would multiply each LTCH's case-mix index adjusted for short-stay outliers by the number of discharges from the Medicare claims in MedPAR files adjusted for short-stay outliers and the weighted average per discharge payment amount computed above. As we clarify below, this statement did not reflect the actual methodology used in either the proposed or final rules.

Comment: One commenter asked about the variable ''Prospective Payment System Payments (Excluding Outlier Payments)'' used in the rate-setting file posted on the website. This variable is described as ''Estimate of payments under the proposed LTCH prospective payment system for cases in the FY 2000 MedPAR by applying the proposed payment methodologies for very short-stay discharges and short-stay outliers, but excluding outlier payments.'' The commenter wanted to know whether the method used to determine this variable was—(1) applied to proposed payment methodologies for very short-stay discharges and short-stay outliers or (2) used the variable ''Number of Equivalent MedPAR Cases'' and the variable ''Case Mix Index''.

Response: In the rate-setting file and in Step e. described in the proposed rule (67 FR 13471), we actually estimated prospective payment system payments for each provider by simulating payments on a case-by-case basis by applying the proposed payment methodologies for very short-stay discharges and short-stay outliers to the case-specific discharge information from the MedPAR files. Thus, the variable ''Prospective Payment System Payments (Excluding Outlier Payments)'' in the rate-setting file was determined by applying proposed payment methodologies for proposed very short-stay discharges and short-stay outliers. However, a reasonable estimate of prospective payment system payments under the proposed LTCH prospective payment system can be determined by using the variable ''Number of Equivalent MedPAR Cases'' and the variable ''Case-Mix Index'' in the rate-setting file, which was adjusted for short-stay outliers by counting them as a fraction of a discharge based on the ratio of the length of stay of the case to the average length of stay of the LTC–DRG for nonshort-stay outlier cases. This ''proxy'' using the fractional adjustment for short-stay outliers was not used to determine the payment for those cases in determining estimated total prospective payment system payments in the rate-setting file or in the determination of the proposed standard Federal rate since, as we explained above, we actually estimated prospective payment system payments on a case-by-case basis.

For this final rule, as we explained above for the proposed rule, we estimated prospective payment system payments for each provider by simulating payments on a case-by-case basis by applying the final payment policy for short-stay outliers (as described in section X.C. of this preamble) and the final adjustments for differences in area wages (as described in section X.J.1. of this preamble) and cost-of-living for Alaska and Hawaii (as described in section X.J.5. of this preamble) to the case-specific discharge information from the FY 2001 MedPAR files.

For purposes of this calculation, we simulated case-by-case payments for each LTCH as if it were paid based on 100 percent of the standard Federal rate in FY 2003 rather than the transition blend methodology described in section X.K.2.h. of this final rule. Total payments for each LTCH are summed for all LTCHs. This total is the denominator in the calculation of the budget neutral adjustment.

f. Determine the budget neutrality adjustment.

For this final rule and as we discussed in the proposed rule, the budget neutrality adjustment is calculated by dividing total adjusted payments under the current payment system (the total amount calculated in section X.K.2.c. of this preamble) by estimated payments under the prospective payment system, without a budget neutrality adjustment (the total amount calculated in section X.K.2.e. of this preamble).

g. Determine the standard Federal payment rate.

For this final rule and as we explained in the proposed rule, the resulting budget neutrality adjustment (determined in section X.K.2.f. of this preamble) is then multiplied by the average weighted per discharge payment amount under the current payment system and we adjusted the result further to include a behavioral offset. As previously stated, to calculate the standard Federal payment rate, we estimated what would have been paid under the current payment system. However, we expect that as a result of the implementation of the new prospective payment system, LTCHs may experience usage patterns that are significantly different from their current usage patterns. Since there is a fixed payment based on diagnosis in a per discharge prospective payment system

regardless of the length of stay (except for additional outlier payments), there will be an incentive to discharge a patient (to home or to another site of care) as early in the stay as possible in order to minimize cost and maximize profit. As a result, discharges may occur earlier in the LTCH stay. This will result in lower payments under the current prospective payment system for this care that must be taken into account when computing the budget neutral payment rate. Furthermore, as explained in sections X.A.2. and K. of this preamble, we expect the LTCH's coding practice of LTCHs to improve once the prospective payment system is implemented, which has a significant potential of resulting in a case-mix that will be higher than what would be used to determine the budget-neutral standard Federal rate.

As was the case when the hospital inpatient prospective payment system was implemented, improved coding could result in a higher case-mix because hospitals will code secondary diagnoses more completely and accurately, now that these diagnoses are factored into the LTC–DRG assignment and, ultimately, their payment. The inclusion of appropriate secondary diagnoses could result in the case being grouped into a higher weighted LTC–DRG. This is especially true for LTCHs since they generally treat more medically complex patients who are more likely to have many secondary diagnoses. Thus, if the same cases that were used to develop the standard Federal rate are grouped into higher weighted LTC–DRGs as a result of improved coding, this higher case-mix will result in higher payments under the payment system for this care. This effect must also be taken into account when computing the budget neutral standard Federal rate. Accounting for these effects through an adjustment is commonly known as a behavioral offset.

The proposed standard Federal payment rate with a behavioral offset was $27,649.02, which included the proposed 0.27 percent reduction for the behavioral offset. As we explained in the proposed rule, consistent with the assumptions made under the IRF prospective payment system, in determining the proposed (and final) behavioral offset adjustment, we assumed that the LTCHs would regain 15 percent of potential losses and augment payment increases by 5 percent through transfers occurring at or beyond the mean length of stay associated with the LTC–DRG at any point.

Comment: One commenter was concerned about the proposed 0.27 percent reduction for the behavioral offset to the proposed standard Federal rate. The commenter stated that no credible data was identified to support this number. The commenter contended that CMS should consider the budgetary impact of the migration of patients from the IRF setting to the LTCH setting, given the growing number of rehabilitation cases admitted to LTCHs and the significant increase in the reimbursement for these services in LTCH settings as compared to IRF settings. The commenter also recommended that the behavioral offset used for LTCHs should be adjusted to be consistent with the behavioral offset of the IRF prospective payment system (1.16 percent), and that the budget neutrality adjustment should be recalculated. The commenter suggested that this would serve to ensure that there is no improper payment incentive for treating rehabilitation patients in a LTCH rather than at lower cost in an IRF.

Response: We believe that we utilized the best data available to develop the proposed behavioral offset. Consistent with the IRF prospective payment system, and as we explained in the proposed rule, in our actuarial model we assumed that LTCHs would regain 15 percent of potential losses and augment payment increases by 5 percent through transfers occurring at or beyond the mean length of stay associated with the LTC–DRG at any point. In an effort to be as consistent as possible with the IRF prospective payment system, we used the same assumptions (described above) that we used to calculate the behavioral offset for the IRF prospective payment system. We used the same assumptions because, as the commenter noted, there are parallels between IRFs and LTCHs, and, absent any convincing data to the contrary, we believe these hospitals would react similarly to similar incentives. The difference in the behavioral offsets (that is, 1.16 percent for IRF prospective payment system and the proposed 0.27 percent for the proposed LTCH prospective payment system) is due to the different numbers of LTCHs and IRFs and the differences in the distribution of losses and gains for the respective hospitals under each prospective payment system.

Based on the commenter's recommendation to reevaluate the methodology we used to determine behavioral offset, we took into consideration the increases to the hospital-specific target amounts and cap on the target amounts for LTCHs provided for by section 307(a)(1) of the BIPA and the enhanced bonus payments for LTCHs for FY 2001 and FY 2002 provided for by section 122 of the BBRA. As a result, based on updated data, the standard Federal payment rate in this final rule includes a behavioral offset of 0.34 percent. As we explained in the proposed rule, consistent with the methodology used under the IRF prospective payment system, in determining the behavioral offset, we assumed that LTCHs would regain 15 percent of potential losses and augment payment increases by 5 percent through transfers occurring at or beyond the mean length of stay associated with the LTC–DRG at any point. The final standard Federal payment rate is $34,956.15 for FY 2003. This dollar amount includes a 0.34 percent (that is, thirty-four hundredths of one percent) reduction for the behavioral offset in the standard Federal payment rate otherwise calculated under the methodology described above.

h. Determine a budget neutrality offset to account for the transition methodology.

Section 123(a)(1) of the BBRA requires that the LTCH prospective payment system maintain budget neutrality. As discussed in further detail in section X.N. of this preamble, we are implementing a 5-year transition period from cost-based TEFRA reimbursement to prospective payment, during which a LTCH will be paid an increasing percentage of the LTCH prospective payment system rate and a decreasing percentage of its TEFRA rate for each discharge. Furthermore, we will allow a LTCH to elect to be paid based on 100 percent of the standard Federal rate in lieu of the blend methodology.

Based on a comparison of the estimated FY 2003 payments to each LTCH based on 100 percent of the proposed standard Federal rate and the proposed transition blend methodology, in the proposed rule (67 FR 13472), we projected that approximately 58 percent of LTCHs would elect to be paid based on 100 percent of the proposed standard Federal rate since they would receive higher payments than under the proposed transition blend methodology. We also projected that the remaining 42 percent of LTCHs would choose to be paid based on the proposed transition blend methodology (80 percent of TEFRA; and 20 percent of the prospective payment system) in FY 2003 since they would receive higher payments than if they were paid based on 100 percent of the proposed Federal rate.

Comment: One commenter observed that since many of its hospitals included in the rate-setting file posted on CMS' website are projected to have total LTCH prospective payments in excess of total TEFRA payments for FY 2003, these

LTCHs would be included in the 58 percent of LTCHs that CMS expects would elect to be paid immediately based on 100 percent of the proposed standard Federal rate in the first year of the proposed transition period. The commenter noted that its LTCHs have cost reporting periods that run from September to August, and concluded that hospitals would be able to transition to the full Federal rate regardless of when their cost reporting period begins. The commenter stated that otherwise, its hospitals would not be able to elect payment based on to the full Federal rate until September 1, 2003, thereby making the 58-percent assumption too high. The commenter added that, since CMS specified in the proposed rule that one of CMS's ''goals is to transition hospitals to full prospective payments as soon as appropriate'' (67 FR 13474), this supports the conclusion that hospitals would be able to elect payment based on the full Federal rate during the proposed transition period regardless of their cost reporting years.

Response: The commenter is incorrect that LTCHs would be able to transition immediately on October 1, 2002, to payment based on the full Federal rate, regardless of when their next cost reporting period begins. As we stated in the proposed rule (67 FR 13473), ''the transition period for all hospitals subject to the proposed LTCH prospective payment system would *begin with the hospitals' first cost reporting period beginning on or after October 1, 2002* and extend through the hospitals' last cost reporting period beginning before October 1, 2007'' (emphasis added). In addition, in the proposed rule (67 FR 13474), we stated, ''In implementing the proposed prospective payment system for LTCHs, one of our goals is to transition hospitals for full prospective payments as soon as appropriate. Therefore, we are proposing under § 412.533(b), to allow a LTCH to elect payment based on 100 percent of the Federal rate at the *start* of any of its cost reporting periods during the 5-year transition period rather than incrementally shifting from cost-based payments to prospective payments' (emphasis added). Thus, a LTCH must wait until its cost reporting period that *begins during FY 2003* to elect payment based on the full Federal rate. This means that the commenter's LTCHs, many of which have cost reporting periods that begin on September 1, would have to wait until September 1, 2003, to transition to payments based on the full Federal rate. Before their cost reporting period that begins during FY 2003, the LTCHs would continue to receive payment under the TEFRA methodology. Accordingly, in the proposed rule when we estimated that 58 percent of all LTCHs would elect to be paid based on 100 percent during FY 2003, we accounted for our proposed policy that would require a LTCH to wait until the beginning of its cost reporting period beginning on or after October 1, 2002, to elect payment based on the full proposed Federal rate.

In this final rule, for FY 2003, using the same methodology described in the proposed rule, based on updated data, we project that approximately 49 percent of LTCHs will elect to be paid based on 100 percent of the standard Federal rate rather than receive payment on the transition blend methodology. Using the same methodology described in the proposed rule, this projection, which uses updated data and inflation factors, is based on our estimate that LTCHs would receive higher payments based on 100 percent of the standard Federal rate compared to the payments they would receive under the transition blend methodology. Similarly, we project that the remaining 51 percent of LTCHs will choose to be paid based on the transition blend methodology (80 percent of TEFRA; and 20 percent of the prospective payment system) in FY 2003 since they would receive higher payments than if they were paid based on 100 percent of the standard Federal rate.

As we discuss in section X.K.2.g. of this preamble, the standard Federal rate ($34,956.15) is determined as if all LTCHs will be paid based on 100 percent of the standard Federal rate in FY 2003. Since we are implementing a 5-year transition period (section X.N. of this preamble) in order to maintain budget neutrality, as we described in the proposed rule, we will reduce all LTCH Medicare payments during the transition period by a factor, which is equal to 1 minus the ratio of the estimated TEFRA reasonable cost-based payments that would have been made if the LTCH prospective payment system had not been implemented, to the projected total Medicare program prospective payment system payments (that is, payments made under the transition methodology and the option to elect payment based on 100 percent of the Federal rate as described in section X.N. of this preamble).

In the March 22, 2002 proposed rule, we projected that the full effect of the 5-year transition period and the election option would result in a cost to the Medicare program of $230 million as follows: For FY 2003, $50 million; for FY 2004, $80 million; for FY 2005, $60 million; for FY 2006, $30 million; for FY 2007, $10 million.

Thus, in order to maintain budget neutrality, we proposed to apply a 5.1 percent reduction (0.949) to all LTCHs' payments in FY 2003 to account for the estimated cost of $50 million for FY 2003. Furthermore, in order to maintain budget neutrality, we indicated that in the future we would propose a budget neutrality offset for each of the remaining years of the transition period to account for the estimated costs for the respective fiscal year.

In this final rule, based on the latest available data, the policy revisions described, and the effect of the increase to the hospital target amounts and caps on the target amounts provided for under section 307(a)(1) of BIPA, we project that the full-effect of the 5-year transition period and the election option will result in a cost to the Medicare program of $240 million as follows:

Fiscal year	Estimated cost (in millions)
2003	$50
2004	80
2005	60
2006	40
2007	10

Therefore, in this final rule, we are applying a 6.6 percent reduction (0.934) to *all* LTCHs' payments in FY 2003 to account for the estimated cost of the $50 million for FY 2003.

Comment: Some commenters were concerned that CMS' projected costs of LTCHs transitioning to payment based on 100 percent of the standard Federal rate in FY 2003 are incorrect and need to be clarified. The commenters stated that their calculations indicated that if the proposed 5.1 percent reduction were applied to *all* FY 2003 LTCH payments, it would result in a reduction of more than $90 million, which is more than double what is required to maintain budget neutrality. Other commenters similarly stated that they calculated that CMS will actually reduce payments by approximately $94 million, rather than the estimated $50 million. These commenters proposed that Medicare ensure budget neutrality by neither underpaying nor overpaying LTCHs. Specifically, the commenters asked that CMS clarify how a $50 million cost to the Medicare program equates with the proposed 5.1 percent reduction to maintain budget neutrality at $1.8 billion. The commenters also inquired as to whether both the LTCH prospective payments system and the cost-based portions of the proposed transition blend methodology payments

in FY 2003 are to be reduced by the proposed 5.1 percent.

Response: In the March 22, 2002 proposed rule, based on a comparison of the estimated FY 2003 payment to each LTCH based on 100 percent of the proposed standard Federal rate versus the proposed transition blend methodology, we projected that approximately 58 percent of LTCHs would elect to be paid based on 100 percent of the proposed standard Federal rate since they would receive higher payments than under the proposed transition blend methodology. We projected that the cost of 58 percent of LTCHs transitioning during FY 2003 to 100 percent of the proposed standard Federal rate would be $50 million. Since the proposed standard Federal rate of $27,649.02 was calculated as if all LTCHs would be paid based on 100 percent of the proposed standard Federal rate in FY 2003, in order to maintain budget neutrality, we proposed to reduce *all* LTCH Medicare payments by 5.1 percent (that is, *both* the prospective payment portion *and* the cost-based portion of the proposed transition blend methodology). Thus the proposed 5.1 percent reduction would be applied to *all* LTCH payments, regardless of whether the LTCH is being paid based on 100 percent of the proposed standard Federal rate or the transition blend methodology. The proposed reduction in payments to all LTCHs was considered in maintaining budget neutrality at $1.8 billion.

The commenters expressed concern that our projected costs of LTCHs transitioning to payment based on 100 percent of the proposed standard Federal rate in FY 2003 are incorrect and need to be clarified. In the proposed rule, program payments for LTCH services were estimated to be $1.8 billion in FY 2003. Since the proposed standard Federal rate was calculated as if all LTCHs would be paid based on 100 percent of the proposed standard Federal rate in FY 2003, without the proposed 5.1 percent reduction, payments would increase from $1.800 billion to $1.892 billion because of those LTCHs that in FY 2003 would be paid based on the transition blend methodology (that includes 80 percent of TEFRA payments) rather than receive payments based on 100 percent of the proposed standard Federal rate.

As stated above, since a LTCH must wait until the *start* of its cost reporting period that begins in FY 2003 before transitioning to payment based on 100 percent of the standard Federal rate, the actual amount of projected LTCH payments for all cost reporting periods that begin during FY 2003 (that is, for complete 12-month periods) is $92 million. Dividing $92 million by $1.8 billion yields 5.1 percent. This was the percent reduction that we proposed to apply to all LTCH payments made in cost reporting periods beginning during FY 2003. However, since the $92 million includes payments made for portions of cost reporting periods extending beyond FY 2003, it was reduced to represent only the portion of LTCH prospective payments made *during* FY 2003 (that is, payments between October 1, 2002 and September 30, 2003). Accordingly, to account for the portion of LTCH payments that were estimated to be made based on 100 percent of the Federal rate during FY 2003, the projected cost of $92 million based on complete cost reporting periods was reduced to $60 million based on an analysis of LTCH costs incurred by each LTCH for the portion of its cost reporting period that will occur during FY 2003. For example, for a LTCH with a July 1st cost report begin date, only the projected costs for July 1, 2003 through September 30, 2003 were used.

Finally, since LTCH payments for some services provided during FY 2003 may not be made until FY 2004 (for example, a patient may be treated in a LTCH in September 2003, but payment may not be made by Medicare under the LTCH prospective payment system until October 2003, which is during FY 2004), the cost of $60 million was further reduced to $50 million based on an analysis of LTCH discharges occurring in each LTCH for the portion of its cost reporting period that will occur during FY 2003. For example, for a LTCH with a July 1st cost report begin date, only those discharges projected to occur from July 1, 2003 through September 30, 2003 were considered. Thus, in the proposed rule, $50 million represented the estimated costs that the Medicare program was projected to incur for LTCH prospective payments (based on 100 percent of the proposed standard Federal rate) made during FY 2003 (that is, payments between October 1, 2002 and September 30, 2003). We note that the same methodology was also employed in this final rule to determine the 6.6 percent reduction to all LTCH payments in FY 2003.

Comment: One commenter was ''troubled'' by our assumption that all hospitals whose payments would increase based on 100 percent of the Federal rate would in fact act appropriately and notify their fiscal intermediary prior to the commencement of the prospective payment system in order to qualify for payment at 100 percent of the Federal rate. The commenter asserted that in order for this to happen, more than 150 (58 percent of 270) LTCHs would, without exception, accurately analyze the financial impact of the LTCH prospective payment system, take appropriate action to make the election to 100 percent of the Federal rate, and do so prior to 30 days of the onset of the LTCH prospective payment system. The commenter believed that the number of hospitals that elect payment based on the Federal rate would be far fewer than anticipated. The commenter added that there may be other reasons why a LTCH which may have been projected to gain reimbursement by moving immediately to the full prospective payment system may choose not to make the election.

Response: Our estimate in the proposed rule that 58 percent of LTCHs will choose to be paid based on 100 percent of the proposed standard Federal rate beginning in FY 2003 was based on the best data that we had available at that time. We note that, as we move through the initial years of implementation, we will make any necessary adjustments to maintain budget neutrality. In addition, just as a LTCH that is projected to gain reimbursement by opting for payment based on 100 percent of the Federal rate may have reasons why it would not make this election, the same may be true for LTCHs that are projected to do better under the transition blend, yet for some reason choose to be paid 100 percent under the LTCH prospective payment system. We have also clarified in section X.N. of this preamble that to elect to be paid based on 100 percent of the Federal rate for cost reporting periods that begin on or after October 1, 2002 through November 30, 2002, a LTCH must notify its fiscal intermediary in writing of this election by before November 1, 2002, not 30 days prior to the start of its next cost reporting period.

Comment: One commenter recommended that the proposed 5.1 percent reduction be applied only to those LTCHs that choose to be paid on the proposed transition blend methodology. Another commenter suggested that, instead of applying the proposed 5.1 percent reduction to all LTCH prospective payment system payments based solely on the assumption that 58 percent of all existing LTCHs will opt to go immediately to payment based on 100 percent of the proposed standard Federal rate, CMS should make annual adjustments to account for actual experience.

Response: Under section 123 of Public Law 106–113 and section 307 of Public Law 106–554, the Secretary has broad

authority to develop the LTCH prospective payment system. Under this authority, as we discuss in section X.N. of this preamble, effective for cost reporting periods beginning on or after October 1, 2002, and before October 1, 2006, we are providing LTCHs with the option to be paid either under the transition blend methodology or under the LTCH prospective payment system. In other words, a LTCH may elect to be paid on 100 percent of the unadjusted standard Federal rate at the start of its cost reporting period during the 5-year transition period specified in § 412.533(a). We do not believe that it is appropriate for LTCHs in either category (that is, LTCHs that elect to receive payment based on 100 percent of the Federal rate or LTCHs that are paid under the transition blend) to solely bear the costs of the 5-year transition methodology. Rather, we believe that it is more equitable for all LTCHs to fund the costs of transitioning to the new LTCH prospective payment system. Therefore, we proposed to apply the 5.1 percent reduction to all LTCHs for cost reporting periods beginning during FY 2003. Accordingly, for this final rule, we are applying the revised percent reduction of 6.6 percent (1 − 0.934) to *all* LTCH payments for cost reporting periods beginning during FY 2003. This adjustment is being made based on an estimate of the number of LTCHs that will elect to be paid at 100 percent of the Federal rate. Since this is a prospective payment system with prospectively determined payment rates, we do not agree with the commenter that it would be appropriate to make the adjustment based on subsequent actual data on the number of hospitals that make the election.

As we explained in the proposed rule (67 FR 13472), based on the data available at that time, we stated in the proposed rule that we would propose the following budget neutrality offsets to LTCH payments during the transition period: 3.9 percent (0.961) in FY 2004; 2.6 percent (0.974) in FY 2005; and 1.3 percent (0.987) in FY 2006. Based on the updated data available at this time, using the same methodology described in the proposed rule, we estimate the budget neutrality offsets to LTCH payments during the remainder of the transition period would be 5.0 percent (0.950) in FY 2004; 3.4 percent (0.996) in FY 2005; and 1.7 percent (0.983) in FY 2006. No budget neutrality offset is necessary in the 5th year of the transition period (FY 2007) because under the transition methodology (described in section X.N. of this preamble), all LTCHs will be paid based on 100 percent of the standard Federal rate and zero percent of payments under TEFRA. These estimates are based on the inflation factors and projected Medicare spending for LTCHs discussed in section XII.6. of this final rule, and that an estimated 49 percent of LTCHs will elect to be paid based on 100 percent of the standard Federal rate rather than the transition blend.

As we discussed in the proposed rule, consistent with the statutory requirement for budget neutrality, we intend for estimated aggregate payments under the LTCH prospective payment system to equal the estimated aggregate payments that would be made if the LTCH prospective payment system would not be implemented. Our methodology for estimating payments for purposes of the budget neutrality calculations uses the best available data and necessarily reflects assumptions. When the LTCH prospective payment system is implemented, we will monitor payment data and evaluate the ultimate accuracy of the assumptions used to calculate the budget neutrality calculations (for example, inflation factors, intensity of services provided, or behavioral response to the implementation of the LTCH prospective payment system, as discussed in section X.K. of this final rule). To the extent these assumptions significantly differ from actual experience, the aggregate amount of actual payments may turn out to be significantly higher or lower than the estimates on which the budget neutrality calculations are based.

As we discussed in the proposed rule, section 123 of Public Law 106–113 and section 307 of Public Law 106–554 provide the Secretary broad authority in developing the LTCH prospective payment system, including the authority for appropriate adjustments. Under this broad authority, in this final rule at § 412.523(d)(3), we have provided for the possibility of making a one-time prospective adjustment to the LTCH prospective payment system rates by October 1, 2006, so that the effect of any significant difference between actual payments and estimated payments for the first year of the LTCH prospective payment system would not be perpetuated in the prospective payment system rates for future years. (We note that in other contexts (for example, outlier payments under the hospital inpatient prospective payment system) differences between estimated payments and actual payments for a given year are not built into the prospective payment system rates for subsequent years. However, the statutory ratesetting scheme under the LTCH prospective payment system is very different than in other contexts.)

Comment: Some commenters questioned our proposal to make a one-time prospective adjustment to the LTCH prospective payment system rates for unanticipated costs incurred in the first year of implementation in order to maintain budget neutrality. The commenters believed that such a retrospective reconciliation would undermine predictability and stability of the LTCH prospective payment system, and does not appear to have been used by CMS previously or authorized by the Congress. The commenters also stated that we had not outlined any procedures for differentiating spending increases that are warranted and in the best interest of Medicare patients from increases that resulted from mistaken assumptions made by our actuaries. The commenters asked that we abandon this proposal, or at a minimum, provide that it will adjust payments upward if post-prospective payment system LTCH expenditures do not meet the levels projected.

Other commenters opposed our proposal to use a one-time reconciliation. They believed that we should be able to predict, with reasonable certainty, the number of LTCHs that will elect to move directly to the full Federal rate since it would be rational for any lower costs LTCHs to forego this option. The commenters recommended that we go through normal rulemaking prior to making any downward adjustments to any rates, ''because any such adjustment would be vulnerable to budgetary pressures of the moment.''

Response: We understand the commenters' concerns, but we note that section 123 of Public Law 106–113 and section 307 of Public Law 106–554 provide the Secretary broad authority to develop the LTCH prospective payment system, including the authority for appropriate adjustments. Under this authority, we proposed a possible one-time prospective adjustment to the LTCH prospective payment system rates by October 1, 2006, so that the effect of any significant difference between actual payments and estimated payments for the first year of the LTCH prospective payments system is not perpetuated in the prospective payment rates for future years. We believe this provision acts to limit either unintended Medicare program savings or unintended spending increases under the LTCH prospective payment system.

When estimating payments for purposes of the budget neutrality calculations, we use the best available

data and any appropriate assumptions. Payment data from the LTCH prospective payment system will be monitored to ensure the ultimate accuracy of the assumptions used to calculate the budget neutrality calculations (for example, inflation factors, intensity of services provided, or behavioral response to the implementation of the LTCH prospective payment system). To the extent that these assumptions significantly differ from actual experience, the aggregate amount of actual payments may turn out to be significantly higher or lower than the estimates on which the budget neutrality calculations are based. Finally, if we determine that changes to the calculation of the rates or budget neutrality are warranted, we will comply with the Administrative Procedure Act in making a one-time adjustment so that the effects of any significant differences between actual payments and estimated payments for the first year of the LTCH prospective payment system are not perpetuated in future years.

In the proposed rule, we estimated that total Medicare program payments for LTCH services over the next 5 years would be $1.80 billion for FY 2003; $1.91 billion for FY 2004; $2.02 billion for FY 2005; $2.14 billion for FY 2006; and $2.26 billion for FY 2007. These estimates were based on most recent estimate of the excluded hospital market basket at that time of 3.6 percent for FYs 2003 through 2005, 3.5 percent for FY 2006, and 3.4 percent for FY 2007, that 58 percent of LTCHs would elect to be paid based on 100 percent of the proposed standard Federal rate rather than the proposed transition blend, and that there would be an increase in Medicare beneficiary enrollment of 2.2 percent in FY 2003, 2.3 percent in FYs 2004 and 2005, 2.4 percent in FY 2006, and 2.3 percent in FY 2007.

In this final rule, based on updated data, we estimate that total Medicare program payments for LTCH services over the next 5 years will be:

Fiscal year	Estimated payments ($ in billion)
2003	$1.59
2004	1.69
2005	1.79
2006	1.90
2007	2.00

These estimates are based on an update of our estimate of FY 2003 payments to LTCHs using our Office of the Actuary's most recent estimate of the excluded hospital market basket of 3.4 percent for FY 2004, 3.5 percent for FY 2005, 3.2 percent for FY 2006, and 2.9 percent for FY 2007, and our Office of the Actuary's projection that there will be an increase in Medicare beneficiary enrollment of 1.8 percent in FY 2004, 1.5 percent in FYs 2005 and 2006, and 1.9 percent in FY 2007.

Comment: One commenter stated that the TEFRA caps for nearly 50 percent of the LTCHs are lower than the proposed standard Federal rate, which may possibly violate budget neutrality. Specifically, the commenter stated that, under the TEFRA system, since the ''new'' provider cap for LTCHs in FY 2002 and the maximum amount of reimbursement that a new LTCH could receive is approximately $24,000, as compared to the proposed standard Federal rate, higher costs may be incurred by the Medicare program under the proposed LTCH prospective payment system. The commenter stated that since it is difficult to accurately project the costs under the LTCH prospective payment system given the limitations of the data, it is not unlikely that budget neutrality will be violated. The commenter recommended that CMS reexamine the relevant data for all LTCHs (including those not included in the rate-setting file) and devise a methodology that takes into account the large number of ''new'' LTCHs and the abnormally high costs associated with ''new'' LTCHs.

Response: We disagree with the commenter that budget neutrality will be violated. We believe the commenter is inappropriately equating the TEFRA target amount to the standard Federal rate. Because the TEFRA payment methodology and the LTCH prospective payment system are fundamentally different systems, budget neutrality must be maintained in the aggregate at total payment levels, not among the various components of the respective systems. Thus, the fact that the TEFRA target amount of $24,000 for new providers is less than the proposed standard Federal rate of $27,649.02 is irrelevant.

While we are aware that there are some limitations to the data, the data that we used were the best data available at the time. As the commenter recommended, we intend to reexamine the LTCH prospective payment system as more data becomes available. However, we want to emphasize that the statute requires that the LTCH prospective payment system must ultimately be budget neutral to total TEFRA payments.

L. Development of the Federal Prospective Payments

Once the relative weights for each LTC–DRG and the standard Federal payment rate are calculated, the Federal prospective payments can be determined. As provided for in this final rule, in accordance with § 412.523(c)(4), a LTC–DRG payment is calculated by multiplying the standard Federal payment rate by the appropriate LTC–DRG relative weight. The equation is as follows:

Federal Prospective Payment = LTC–DRG Relative Weight *Standard Federal Payment Rate

M. Computing the Adjusted Federal Prospective Payments

The Federal prospective payments described in section X.L. of this preamble will be adjusted to account for differences in area wages by multiplying the labor-related share of the unadjusted Federal prospective payment amount (LTC–DRG relative weight × standard Federal rate) by the appropriate LTCH wage index (see section X.J.1. of this preamble). The Federal prospective payments described in section X.L. of this preamble will also be adjusted to account for the higher costs of hospitals in Alaska and Hawaii by multiplying the unadjusted Federal prospective payment amount by the appropriate adjustment factor shown in the table in section X.J.5. of this final rule. To illustrate the methodology we are using to adjust the Federal prospective payments, we are providing the following example:

In FY 2003, a Medicare patient is in a LTCH located in Chicago, Illinois (MSA 1600) with a one-fifth wage index value of 1.0202 (see Table 1 in the Addendum to this final rule). The Medicare patient is classified into LTC–DRG 4 (Spinal Procedures), which has a relative weight of 1.2493 (see Table 3 of the Addendum to this final rule). To calculate the LTCH's total adjusted Federal prospective payment for this Medicare patient, we compute the wage-adjusted Federal prospective payment amount by multiplying the unadjusted standard Federal rate ($34,956.15) by the labor-related share (72.885 percent) and the wage index (1.0202). This wage-adjusted amount is then added to the nonlabor-related portion of the standard Federal rate (27.115 percent) to determine the wage-adjusted Federal rate, which is multiplied by the LTC–DRG relative weight to calculate the total adjusted Federal prospective payment for FY 2003 ($44,313.67). The following illustrates the components of the calculations in this example:

Unadjusted Federal Prospective Payment Rate	$34,956.15
Labor-Related Share	× 0.72885
Labor-Related Portion of the Federal Rate	= $25,477.79
Wage Index (MSA 1600)	× 1.0202
Wage-Adjusted Amount	= $25,992.44
Nonlabor-Related Portion of the Federal Rate	+ $ 9,478.36
Wage-Adjusted Federal Rate	= $35,470.80
LTC–DRG 4 Relative Weight	× 1.2493
Total (Wage) Adjusted Federal Prospective Payment	= $44,313.67

N. Transition Period

Under the broad authority conferred upon the Secretary by section 123 of Public Law 106–113 for development of a prospective payment system for LTCHs, we are implementing, under § 412.533, a 5-year transition period from reasonable cost-based reimbursement under the TEFRA system to a prospective payment based on industry-wide average operating and capital-related costs. Under the average pricing system, payment will not be based on the experience of an individual hospital. We believe that a 5-year phase-in will provide LTCHs time to adjust their operations and capital financing to the new payment system, which is based on prospectively determined Federal payment rates.

Moreover, capital renovation and expansion plans of certain LTCHs may not be amenable to short-term adjustment due to the commitment of capital funds involved. We believe that a 5-year transition period with an increasing percentage of prospective payments will afford LTCHs an opportunity to increase their efficiency in the delivery of operating services and reserve additional payments to finance their capital expenditures.

We further believe that the 5-year phase-in of the LTCH prospective payment system will allow LTCH personnel to develop proficiency with the LTCDRG coding system, resulting in improvement in the quality of the data used for generating our annual determination of relative weights and payment rates. Our analysis conducted during the development of the LTCH prospective payment system revealed that most patients in LTCHs have several diagnosis codes on their Medicare claims indicating multiple CCs, although further review of individual case studies indicated that in some instances all of the diagnoses were not reported. Since payments to LTCHs under the current TEFRA payment system are based on reasonable costs, not diagnosis codes, past coding by LTCHs may not have accurately reflected the patient's diagnoses. Further evidence of incomplete coding is shown by the pairs of LTCDRGs where the ''without CC'' LTCDRG had a higher average charge than the corresponding with CC LTCDRG. As described in more detail in section IX.D. and E. of this final rule, since the LTCDRGs ''with CCs'' require more coded information, we believe this phenomenon indicates incomplete coding and that over the 5-year phase-in of the LTCDRG-based LTCH prospective payment system, this problem will be resolved.

The 5-year transition period will enable us to collect Medicare claims and cost data that will be produced based on new program instructions to providers and fiscal intermediaries, and subject to program integrity monitoring. This gradual phase-in will provide a stable fiscal base for LTCHs, as we analyze data that may lead to our revisiting and perhaps proposing specific policy revisions to the LTCH prospective payment system.

The transition period for all hospitals subject to the LTCH prospective payment system will begin with the hospital's first cost reporting period beginning on or after October 1, 2002 and extend through the hospital's last cost reporting period beginning before October 1, 2007. During the 5-year transition period, a LTCH's total payment under the prospective payment system will be based on two payment percentages—one based on reasonable cost-based (TEFRA) payments, and the other based on the standard Federal prospective payment rate. The blend percentages are as follows:

Cost reporting periods beginning on or after	Federal rate percentage	TEFRA rate percentage
October 1, 2002	20	80
October 1, 2003	40	60
October 1, 2004	60	40
October 1, 2005	80	20
October 1, 2006	100	0

For a cost reporting period beginning on or after October 1, 2002, and before October 1, 2003, the total payment for a LTCH is 80 percent of the amount calculated under the current (TEFRA) payment system for that specific LTCH and 20 percent of the Federal prospective payment amount. The percentage of payment based on the LTCH prospective payment system Federal rate will increase by 20 percentage points each year, while the TEFRA rate percentage will decrease by 20 percentage points each year, for the next 4 fiscal years. For cost reporting periods beginning on or after October 1, 2006, Medicare payment to LTCHs will be determined entirely under the Federal prospective payment system methodology. The TEFRA rate percentage is a LTCH specific amount that is based on the amount that the LTCH would have been paid (under TEFRA) if the prospective payment system were not implemented.

Medicare fiscal intermediaries will continue to compute the LTCH TEFRA payment amount according to § 412.22(b) of the regulations and sections 1886(d) and (g) of the Act. We note that several TEFRA payment system provisions that currently are in effect will no longer be effective for cost reporting periods beginning in FY 2003. For instance, the caps on the target amounts for ''existing'' LTCHs provided for under section 4414 of the BBA (see § 413.40(c)(4)(iii)) for FYs 1998 through 2002 will no longer be applicable for cost reporting periods beginning in FY 2003. For purposes of the LTCH prospective payment system, a LTCH's target amount for FY 2003 will be determined by updating its FY 2002 target amount, which was subject to the FY 2002 cap. In addition, the 15-percent reduction to payments to LTCHs for capital-related costs provided for under section 4412 of the BBA (§ 413.40(j)) is only applicable for portions of cost reporting periods occurring in FYs 1998 through FY 2002. This reduction is no longer applicable for cost reporting periods beginning in FY 2003. Therefore, the TEFRA portion of a LTCH's payment for capital-related costs during the LTCH prospective payment system transition period is based on 100 percent of its Medicare allowable capital costs.

In implementing the prospective payment system for LTCHs, one of our goals is to transition hospitals to full prospective payments as soon as appropriate. Therefore, under § 412.533(c), we will allow a LTCH to elect payment based on 100 percent of the Federal rate at the *start* of any of its cost reporting periods during the 5-year transition period rather than incrementally shifting from cost-based payments to prospective payments. However, a LTCH must wait until its cost reporting period that begins during FY 2003 to make the election to by-pass the transition blend methodology to begin receiving payment based on 100 percent of the Federal rate. Furthermore, once a LTCH elects to be paid based on 100 percent of the Federal rate, it will not be able to revert to the transition blend.

The purpose of the transition period is to allow for a smooth transition from cost-based reimbursement to prospective payment. We believe that it is not appropriate to allow a LTCH to revert back to the blended transition methodology once it elects payment based on 100 percent of the Federal rate because allowing LTCHs to switch back undermines the purpose of transitioning to a fully Federal prospective payment system, as well as being administratively burdensome to our fiscal intermediaries.

In the proposed rule, we stated that, consistent with transition methodology policies under the IRF prospective payment system, in order to elect payment based on 100 percent of the Federal rate, a LTCH must notify the fiscal intermediary of the election no later than 30 days before the beginning of the cost reporting period in the applicable fiscal year beginning on or after October 1, 2003 and before October 1, 2007 (§ 412.533(b)).

Comment: Some commenters are concerned that there will be insufficient time for the submission of notification to elect to be paid on a full Federal rate instead of the transition blend method. Under the proposed rule, the election had to be made no later than 30 days before the beginning of the hospital's cost reporting period in each applicable fiscal year beginning on or after October 1, 2002. Several commenters were concerned that this could prove to be an impossibility depending on the date that this final rule is published. One commenter recommended that the notification should be within a 45-day period of the publication of the final rule, providing a LTCH with sufficient time to notify the fiscal intermediary, as well as to ensure that the hospital is aware of the published LTCH provisions. Another commenter requested a grace period to allow hospitals that have fiscal years beginning at or close to October 1, 2002 additional time to give notice to the fiscal intermediary. One commenter requested clarification regarding when the election to be paid under the full Federal rate may be made. Another commenter pointed out that the use of October 1, 2003 in proposed § 412.533(b)(1) rather than October 1, 2002 in the regulation causes confusion. Apparently, it is not clear if LTCHs may elect to be paid at 100 percent of the Federal rate for cost reporting periods beginning on or after October 1, 2002, but before October 1, 2003.

Response: In response to the comment concerning the ability of a LTCH with a cost reporting period that begins on October 1 to elect payment based on 100 percent of the Federal rate 30 days prior to October 1, 2002, we acknowledge that we inadvertently did not explain the steps a LTCH would undertake in order to elect immediate transition to the full prospective payment system. Specifically, those LTCHs with cost reporting periods that begin on October 1, 2002, and that want to elect to be paid immediately based on 100 percent of the Federal rate may not have sufficient time to notify their fiscal intermediary of their election 30 days prior to October 1, 2002. In this final rule, we are clarifying that LTCHs will have at least 60 days from the publication of this final rule to notify their fiscal intermediary of that election. Accordingly, we are revising § 412.533(c)(2)(ii) to state that for cost reporting periods that begin on or after October 1, 2002 and through November 30, 2002, a LTCH must notify its fiscal intermediary of this election in writing before November 1, 2002. For cost reporting periods beginning on or after December 1, 2002 and for the remainder of the 5-year transition period, the notification of this election must be received by the fiscal intermediary in writing within 30 days prior to the start of the LTCH's next cost reporting period. For example, a LTCH with a cost report period beginning on October 15, 2002, must notify its fiscal intermediary in writing of this election before November 1, 2002, while a LTCH with a cost reporting period beginning on January 1, 2003 must notify its fiscal intermediary in writing of this election before December 2, 2002.

The notification by the LTCH to make the election must be made in writing to the Medicare fiscal intermediary. The intermediary must receive the request on or before the specified date (that is before November 1, 2002 for cost reporting periods that begin on or after October 1, 2002 through November 30, 2002 or before the 30th day before the applicable cost reporting period begins for cost reporting periods beginning on or after December 1, 2002) regardless of any postmarks or anticipated delivery dates. Notifications received, postmarked, or delivered by other means after the specified date will not be accepted. If the specified date falls on a day that the postal service or other delivery sources are not open for business, the LTCH will be responsible for allowing sufficient time for the delivery of the request before the deadline. If a LTCH's notification is not received, payment will be based on the transition period rates.

Comment: Some commenters urged us to allow a LTCH to elect payment based on 100 percent of the Federal rate beginning with discharges occurring on or after October 1, 2002 without regard to the beginning of the hospital's cost-reporting year if its TEFRA limit is below the 75th percentile cap established for pre-1997 LTCHs. In other words, the commenter requests that we allow a LTCH that has a TEFRA limit below the 75th percentile cap established for pre-1997 LTCHs to elect to receive payment based on 100 percent of the Federal rate for the part of its cost reporting period that begins before October 1, 2002.

Response: In accordance with section 123 of Public Law 106–113, the LTCH prospective payment system will be effective beginning with a hospital's first cost reporting period that begins on or after October 1, 2002. Therefore, we are not adopting the commenters' suggestion to allow a LTCH that has a TEFRA limit below the 75th percentile cap for pre-1997 LTCHs to elect payment based on 100 percent of Federal rate beginning with discharges occurring on or after October 1, 2002. In accordance with § 412.500(b), LTCHs must wait until their first cost reporting period that begins on or after October 1, 2002 to start receiving payments under the LTCH prospective payment system, including the election of payments based on 100 percent of the Federal rate as provided for in § 412.533(c).

Comment: Several commenters requested that, even though BIPA mandates that a default LTCH prospective payment system based on existing DRGs be implemented if the Secretary is unable to implement by October 1, 2002, the proposed rule should be modified and become effective by October 1, 2002. The commenters argued that the system should be ''deemed'' as implemented on that date with appropriate retroactive payment adjustments and that a default system should not be implemented as an interim step.

Response: With the publication of this final rule, we are meeting the statutory October 1, 2002 effective date of the LTCH prospective payment system. Therefore, the comment will not be addressed in this final rule.

Comment: One commenter requested clarification of whether a provider that is being transitioned into the LTCH prospective payment system would be paid a percentage of ''the cost-based reimbursement rate'' or would the cost-based percentage be paid on an interim basis subject to cost report reconciliation.

Response: The cost-based percentage of a provider's total Medicare payment under the TEFRA payment system will be subject to cost report reconciliation.

We are revising the regulation text at § 412.533 to reflect this clarification.

In addition, it is now evident that the standard systems changes that are necessary to accommodate claims processing and payment under the new LTCH prospective payment system may not be in place by October 1, 2002. However, in order to comply with the statutory mandate to implement the LTCH prospective payment system no later than October 1, 2002, we are requiring that from October 1, 2002 until the systems changes are completed, all LTCHs, including those that elect to be paid based on 100 percent of the Federal rate, continue to submit their claims to and receive payment from their fiscal intermediaries as they otherwise would if the TEFRA payment system was still in effect. (We note that unless a LTCH that is required to comply with the HIPAA Administrative Simplification Standards obtains an extension in compliance with the Administrative Compliance Act, it must submit an electronic claim in compliance with 42 CFR 162.1002 and 42 CFR 1102 beginning October 16, 2002. Once the standard claims processing systems have been changed, the intermediary will ultimately reconcile any discrepancies between what LTCHs were paid and the payment amount determined under the LTCH prospective payment system. However, since the LTCH prospective payment system is in effect as of October 1, 2002, we would expect all bills submitted during this interim period to conform to the coding and billing guidelines as described in section VIII.H. of this preamble.

In proposed § 412.535, we proposed a schedule for publishing information on the LTCH prospective payment system for each fiscal year in the **Federal Register**, prior to the start of each fiscal year, on or before August 1. This cycle coincides with the statutorily mandated publication schedule for the inpatient acute care prospective payment system. Section 1886(e)(5) of the Act requires that for the acute care prospective payment system, the proposed rule be published in the **Federal Register** not later than ''the April 1 before each fiscal year''; and the final rule, not later than ''the August 1 before such fiscal year.'' The Act imposes no such requirement for the LTCH prospective payment system. Therefore, to avoid concurrent publications for these two systems, for purposes of administrative feasibility and efficiency, we will be considering a change in the schedule for updating the LTCH prospective payment system to be effective July 1 of each year. We will address this issue in the future.

O. Payments to New LTCHs

In the March 22, 2002 proposed rule, for the purposes of defining a new LTCH, we proposed under § 412.23(e)(4) to define a new LTCH as a provider of inpatient hospital services that (1) meets the revised qualifying classification criteria (described in section VIII.B. of this preamble and in § 412.23(e)(1)); and (2) under present or previous ownership (or both), has not received payment as a LTCH for discharges prior to October 1, 2002 (the effective date of the prospective payment system for LTCHs). We also proposed in § 412.500 that the LTCH prospective payment system applies to hospitals with a cost reporting period beginning on or after October 1, 2002.

We believe that these two statements are inconsistent because proposed § 412.23(e)(4) ties the status of a LTCH (that is, existing or new) to whether or not the hospital has received payment as a LTCH prior to the effective date of the LTCH prospective payment system, as opposed to focusing on whether the hospitals first cost reporting period begins on or after October 1, 2002 (the effective date of the statute). We believe the most appropriate focus in the instant case should be linked to the statute's emphasis of cost reporting periods beginning on or after October 1, 2002. In this final rule, we are revising the regulation so that the definition of a new LTCH more closely mirrors the statutory provision. Accordingly, for purposes of Medicare payment under the prospective payment system, we are defining a new LTCH as a provider of inpatient hospital services that otherwise meets the qualifying criteria for LTCHs, set forth in § 412.23(e)(1) and (e)(2) and, under present or previous ownership (or both), and its first cost reporting period as a LTCH begins on or after October 1, 2002. We are revising § 412.23(e)(4) to reflect this correction.

As noted above, new LTCHs will not participate in the 5-year transition from cost-based reimbursement to prospective payment (see section X.N. of this preamble). The transition period described in section X.N. of this preamble is intended to provide existing LTCHs time to adjust to payment under the new system. Since these new LTCHs with cost reporting periods beginning on or after October 1, 2002 would not have received payment under TEFRA for the delivery of LTCH services prior to the effective date of the LTCH prospective payment system, we do not believe that those new LTCHs require a transition period in order to make adjustments to their operations and capital financing, as will LTCHs that have been paid under TEFRA.

This definition of new LTCHs should not be confused with those LTCHs first paid under the TEFRA payment system for discharges occurring on or after October 1, 1997, described in section 1886(b)(7)(A) of the Act, added by section 4416 of Public Law 105–33. As stated in § 413.40(f)(2)(ii), for cost reporting periods beginning on or after October 1, 1997, the payment amount for a ''new'' (post-FY 1998) LTCH is the lower of the hospital's net inpatient operating cost per case or 110 percent of the national median target amount payment limit for hospitals in the same class for cost reporting periods ending during FY 1996, updated to the applicable cost reporting period (see 62 FR 46019, August 29, 1997). Under the prospective payment system for LTCHs, those ''new'' LTCHs that meet the definition of ''new'' under § 413.40(f)(2)(ii) and that have first cost reporting periods prior to October 1, 2002 will be paid under the transition methodology described in section X.N. of this preamble.

For example, a ''new'' LTCH (post-FY 1998) that first began receiving payment as a LTCH on October 1, 2001, will be subject to the 110 percent of the median target amount payment limit for LTCHs (in accordance with § 413.40(f)(2)(ii)) for both its FY 2002 (October 1, 2001 through September 30, 2002) and FY 2003 (October 1, 2002 through September 30, 2003) cost reporting periods. Assuming the hospital has not elected to be paid 100 percent of the Federal rate for its cost reporting period beginning on October 1, 2002 (the first cost reporting period when the LTCH will be subject to the prospective payment system), the hospital would be paid under the transition methodology whereby the LTCH's TEFRA portion of its payment for operating costs (80 percent) is limited by the 110 percent of the median target amount payment limit for LTCHs under § 413.40(f)(2)(ii). For its cost reporting period beginning on October 1, 2003 (which is the hospital's third cost reporting period), under the transition methodology, that LTCH's TEFRA portion of its payment for operating costs (60 percent) will be limited to its target amount as determined under § 413.40(c)(4)(v). Furthermore, if a hospital is designated as a LTCH on September 1, 2002, it would not be considered a new LTCH under § 412.23(e)(4), even if it had not discharged any patients or received any payments as of the implementation date of the LTCH prospective payment system on October 1, 2002, because its first cost reporting period didn't begin

on or after October 1, 2002. Thus, it would be paid according to § 413.40(f)(2)(ii) from September 1, 2002 through August 30, 2003. This LTCH would not be subject to payments under the LTCH prospective payment system until the start of its next cost reporting period on September 1, 2003. At the beginning of its second cost reporting period as a LTCH (that is, September 1, 2003), this LTCH would be subject to the transition period in § 412.533(a)(1), because this provision applies to cost reporting periods beginning on or after October 1, 2002 and before October 1, 2003. Under the blended payments of the transition period in § 412.533(a)(1), 80 percent of payments for operating costs would be paid under the TEFRA system, as described in § 413.40(f)(2)(ii). (This hospital could also elect to be paid 100 percent of the Federal rate for its cost reporting period beginning September 1, 2003.) We did not receive any comments on this proposal.

P. Method of Payment

As discussed earlier, a Medicare patient will be classified into a LTC–DRG based on the principal diagnosis, up to eight additional (secondary) diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The LTC–DRG will be used to determine the Federal prospective payment that the LTCH will receive for the Medicare-covered Part A services the LTCH furnished during the Medicare patient's stay. Under § 412.541(a), the payment is based on the submission of the discharge bill since section 123(a) of Public Law 106–113 requires that the LTCH prospective payment system be a per discharge based system. The discharge bill provides data to allow for reclassifying the stay from payment at the full LTC–DRG rate to payment for a case as a short-stay outlier (under § 412.529) or as a interrupted stay (under § 412.531), or to determine if the case will qualify for a high-cost outlier payment (under § 412.525(a)).

Accordingly, the ICD–9–CM codes and other information used to determine if an adjustment to the full LTC–DRG payment is necessary (for example, length of stay or interrupted stay status) is recorded by the LTCH on the Medicare patient's discharge bill and submitted to the Medicare fiscal intermediary for processing. The payment made represents payment in full, under § 412.521(b), for inpatient operating and capital-related costs, but not the costs of an approved medical education program, bad debts, blood clotting factors, anesthesia services by hospital-employed nonphysician anesthetists or obtained under arrangement, or the costs of photocopying and mailing medical records requested by a QIO, which are costs paid outside the LTCH prospective payment system. We note that in this final rule, under § 412.521(b)(2)(i), we have added a reference to § 413.87 to indicate that payments for Medicare+Choice nursing and allied health education costs are made separate from payments under the LTCH prospective payment system.

Under the current payment system, a LTCH may elect to be paid using the periodic interim payment (PIP) method described in § 413.64(h), and may be eligible to receive accelerated payments as described in § 413.64(g). As we discussed in the proposed rule, with the implementation of a prospective payment system for LTCHs, we will continue to allow the PIPs method of payment as provided for under § 413.64(h) and accelerated payments as provided for under § 413.64(g) for qualified LTCHs.

We are adopting, as final, the proposed provisions for the methods of payment available to LTCHs. In addition, based on a commenter's concern, we wish to clarify a provision that for those LTCHs that choose not to elect to receive payments under the PIP method or that are not qualified to receive payment under the PIP method may continue to bill on an interim basis. Consistent with the interim payment provision under acute care hospital inpatient prospective payment system we are including a new subsection (d) at § 412.541 stating that LTCHs with unusually long lengths of stay, not receiving payment under the PIP method may bill on an interim basis. Consistent with the interim payment provisions under the acute care hospital inpatient prospective payment system at § 412.116(d), we believe that to allow those LTCHs experiencing unusually long stays to receive interim payments 60 days after an admission and every 60 days thereafter would help to alleviate any financial hardship that could result otherwise. We believe that this is both a fair and equitable solution. We are also including some technical changes to the language under § 413.64 to correct regulations citations to reflect the availability of the PIP method for LTCHs under the prospective payment systems.

For those LTCHs that are paid during the 5-year transition based on the blended transition methodology in § 412.533 for cost reporting periods beginning on or after October 1, 2002 and before October 1, 2006, the PIP amount is based on the transition blend. For those LTCHs that are paid based on 100 percent of the standard Federal rate, the PIP amount is based on the estimated prospective payment for the year rather than on the estimated cost reimbursement. In this final rule, as in the proposed rule, we are clarifying that we are excluding outlier payments that are paid upon submission of a discharge bill from the PIP amounts. In addition, in this final rule, as in the proposed rule, Part A costs that are not paid for under the LTCH prospective payment system, including Medicare costs of an approved medical education program, bad debts, blood clotting factors, anesthesia services by hospital-employed nonphysician anesthetists or obtained under arrangement, and the costs of photocopying and mailing medical records requested by a QIO is subject to the interim payment provisions.

Comment: Several commenters explained that LTCHs could experience financing difficulties because of the potentially lengthy period between the time a LTCH incurs costs to provide care and the date on which it receives payment following claims submission. One commenter stated that their provider bills on a cyclical basis, thus, allowing for more prompt receipt of payment from Medicare and more timely billing of deductibles and coinsurance to second insurers. Another commenter pointed out that some LTCHs do not qualify for the PIP method of payment. The commenter asked whether LTCHs that are currently receiving interim payments may switch to the PIP method. The commenter recommended that in order to avoid the heavy financial burden for LTCHs, these hospitals should be allowed to obtain interim payments similar to the method currently available to cost-based providers under the present regulations. In addition, some commenters expressed concern that Medicare fiscal intermediaries may not have the most current data upon which to base interim payments while others had questions regarding the timeliness and accuracy of the process used to determine PIP payments.

Response: As we stated above, we are revising the current regulations at § 412.541 to include a subsection (d) that allows LTCHs that are not receiving payments under the PIP method and that are experiencing unusually long stays to bill 60 days after an admission and every 60 days thereafter. Existing § 412.116(d) permits special interim payments for ''unusually long lengths of stay'' that it further describes as ''after a Medicare beneficiary has been in the hospital at least 60 days.'' LTCHs that

are presently receiving interim payments and would like to switch to the PIP method should contact their fiscal intermediary to determine whether they qualify under regulations at § 413.64(h) for such payments.

Since the comments regarding the accuracy of data and the timeliness of PIP determinations do not address issues that were specifically in the proposed rule, we are not responding to these comments in this final rule.

Comment: One commenter expressed concern with the definition of ''discharge bill'' under the proposed regulations. Specifically, the proposed regulation includes a definition recognizes a ''discharge'' when a patient exhausts Part A benefits during the inpatient stay. The commenter believes that this will create problems for business offices as most current billing systems are not designed to bill in the middle of a patient stay. This will necessitate additional spending on computer programming to properly submit bills.

Response: For LTCH prospective payment purposes, we have clarified the definition of discharge in § 412.503. For payment purposes, a Medicare patient in a LTCH is considered discharged when the patient has exhausted their Medicare Part A benefits (including lifetime reserve days) during a spell of illness (§ 413.40(a)). While we understand the commenter's concerns, our definition of ''discharge'' should not present new problems for LTCHs since under TEFRA, patients who have exhausted their Medicare Part A benefits are also considered to be discharged for Medicare payment purposes.

XI. Provisions of the Final Rule

We are establishing a new Subpart O under 42 CFR part 412, to implement the provisions of the prospective payment system for LTCHs as discussed in detail throughout the preamble to this final rule.

In addition, we are making additional policy changes and conforming changes to the following sections of the regulations under 42 CFR Parts 412, 413, and 476 as discussed throughout this preamble: §§ 412.1, 412.20, 412.22, 412.23, 412.116, 431.1, 413.40, 413.64, and 476.71.

XII. Regulatory Impact Analysis

A. Introduction

We have examined the impact of this final rule as required by Executive Order 12866. We also have examined the impacts of this final rule under the criteria of the Regulatory Flexibility Act (RFA) (Public Law 96–354), section 1102(b) of the Social Security Act (the Act), the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4), and Executive Order 13132 (Federalism).

1. Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for final rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more in any one year (major rules). We have determined that this final rule would not be a major rule within the meaning of Executive Order 12866 because the redistributive effects do not constitute a shift of $100 million in any one year. Because the LTCH prospective payment system must be budget neutral in accordance with section 123(a)(1) of Public Law 106–113, we estimate that there will be no budgetary impact for the Medicare program. (Section XII.B.6. of this preamble includes an estimate of Medicare program payments for LTCH services.)

2. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small businesses in issuing a final rule. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $25 million or less annually. For purposes of the RFA, all hospitals are considered small entities. Medicare fiscal intermediaries are not considered to be small entities. Individuals and States are not included in the definition of a small entity. Therefore, we certify that this final rule will not have a significant impact on a substantial number of small entities, in accordance with RFA.

3. Impact on Rural Hospitals

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of an MSA and has fewer than 100 beds. As discussed in detail in section XII.B. of this preamble, this final rule will not have a substantial impact on hospitals classified as located in rural areas that have fewer than 100 beds.

4. Unfunded Mandates

Section 202 of the UMRA requires that agencies assess anticipated costs and benefits before issuing any proposed rule or any final rule preceded by a rule that may result in expenditures in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. This final rule will not mandate any requirements for State, local, or tribal governments nor would it result in expenditures by the private sector of $110 million or more in any one year.

5. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

We have examined this final rule under the criteria set forth in Executive Order 13132 and have determined that this final rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments or preempt State law.

B. Anticipated Effects

We discuss the impact of this final rule below in terms of its fiscal impact on the Federal Medicare budget and on LTCHs.

1. Budgetary Impact

Section 123(a)(1) of Public Law 106–113 requires us to set the payment rates contained in this final rule such that total payments under the LTCH prospective payment system are projected to equal the amount that would have been paid if this prospective payment system had not been implemented. However, the final unadjusted standard Federal rate ($34,956.15) was calculated as if all LTCHs will be paid based on 100 percent of the standard Federal rate in FY 2003. As discussed in section X.K.2.h. of this final rule, we are implementing a budget neutrality offset to payments (in addition to the budget neutrality adjustment reflected in the standard Federal rate) to account for the monetary effect of the 5-year transition period and the policy to permit LTCHs to elect to be paid based on 100 percent

of the standard Federal prospective payment rate rather than a blend of Federal prospective payments and reasonable cost-based payments during the transition. The amount of the offset is equal to 1 minus the ratio of the estimated TEFRA reasonable cost-based payments that would have been made if the LTCH prospective payment system had not been implemented, to the projected total Medicare program payments that would be made under the transition methodology and the option to elect payment based on 100 percent of the Federal prospective payment rate. Thus, in accordance with section 123(a)(1) Public Law 106–113, there will be no budgetary impact to the Medicare program by implementation of the LTCH prospective payment system. (Section XII.B.6. of this preamble includes an estimate of Medicare program payments for LTCH services.)

2. Impacts on Providers

In order to understand the impact of the new prospective payment system on different categories of LTCHs, it is necessary to estimate payments that will be made under the current (TEFRA) payment methodology (current payments) and payments under the prospective payment system (prospective payments). We also evaluated the ratio of estimated prospective payments to estimated costs for each category of LTCHs.

Hospital groups were based on characteristics provided in OSCAR data and 1999 cost report data from HCRIS. Hospitals with incomplete characteristics were grouped into the ''unknown'' category. Hospital groups include:

—Location: Large Urban/Other Urban/Rural
—Participation Date
—Ownership Control
—Census Region
—Bed Size

To estimate the impacts among the various categories of providers, it is imperative that current payments and prospective payments contain similar inputs. More specifically, we estimated prospective payments only for those providers that we are able to calculate current payment. For example, if we did not have FYs 1996 through 1999 cost data for a LTCH, we were unable to determine an update to the LTCH's target amount as described in section X.K. of this final rule to estimate payment under the TEFRA system.

As previously stated in section X.J. of this final rule, after excluding the data from those LTCHs that are all-inclusive rate providers or that are reimbursed in accordance with demonstration projects (section X.K.2.a. of this final rule), we have both case-mix and cost data for 198 LTCHs. Thus, those 198 providers were used in the regression analyses to determine the appropriateness of various adjustments to the final standard Federal payment rate. However, for the determination of the final unadjusted standard Federal rate ($34,956.15), we only had both Medicare claims data from the FY 2001 MedPAR file and cost data to estimate TEFRA payments for 194 providers. Thus, for the impact analyses shown in the following tables, we simulate payments for 194 LTCHs. The methodology used to update payment data to the midpoint of FY 2003 was based on the use of historical cost report data to determine the relationship between the LTCH's costs and the target amount. Thus, the number of providers reflects only those providers for which we had cost report data available from FYs 1996, 1997, 1998, and 1999 (see discussion in section X.K. of this final rule). We believe these hospitals provide sufficient data to determine appropriate LTC–DRG relative weights. Therefore, we believe the discharges of these 194 LTCHs are representative of the complete LTCH universe.

These impacts reflect the estimated losses or gains among the various classifications of providers for FY 2003. Prospective payments were based on the final standard Federal rate of $34,956.15 and the hospital's estimated case-mix based on FY 2001 claims data. These hospital payments were compared to the hospital's payments based on its cost from the cost report inflated to FY 2003 and subject to the updated per discharge target amount.

3. Calculation of Current Payments

To calculate current costs, cost report data are trended forward from the midpoint of the cost reporting period to the midpoint of FY 2003 using the methodology set forth in section X.K.2.b. of this final rule. To estimate current payments, we determined payments for operating costs for each LTCH in accordance with the methodology in section 1886(b) of the Act. In addition, for the purposes of these impact analyses, in estimating current payments, we took into consideration the increases to the hospital-specific target amounts and the cap on the target amounts for LTCHs provided for by section 307(a)(1) of Public Law 106–554, and the enhanced bonus payments for LTCHs provided for by section 122 of Public Law 106–113. However, as we discuss in section X.K. of this final rule, in accordance with section 307(a)(2) of Public Law 106–554, the increases to the hospital-specific target amounts and the cap on the target amounts for LTCHs provided for by section 307(a)(1) of Public Law 106–554, and the enhanced bonus payments for LTCHs provided for by section 122 of Public Law 106–113, were *not* taken into account in the development of the budget neutral standard Federal rate in the prospective payment system for LTCHs. Further, we compute payments for capital-related costs consistent with section 1886(g)(4) of the Act. To determine each LTCH's average per discharge payment amount under the current payment system, operating and capital-related payments are added together, and then the total payment is divided by the number of Medicare discharges from the cost reports. Total payments for each LTCH are then computed by multiplying the number of discharges from the FY 2001 MedPAR claims data by the average per discharge payment amount.

4. Calculation of Prospective Payments

To estimate payments under the LTCH prospective payment system, we simulated payments on a case-by-case basis by applying the final payment policy for short-stay outliers (as described in section X.C. of this final rule) and the adjustments for area wage differences (as described in section X.J.1. of this final rule) and for the cost-of-living for Alaska and Hawaii (as described in section X.J.5. of this final rule). Additional payments will also be made for high-cost outlier cases (as described in section X.J.6. of this final rule). As noted in section X.J. of this final rule, we will not make adjustments for geographic reclassification, indirect medical education costs, or a disproportionate share of low-income patients.

Next, we calculated payments using the transition blend percentages for FY 2003 (80 percent of current reasonable cost-based (TEFRA) payments and 20 percent of payments under the LTCH prospective payment system) and compared that estimated blended payment to the LTCH's estimated payment if it would elect payment based on 100 percent of the Federal rate (section X.N. of this final rule). If we estimated that a LTCH would be paid more based on 100 percent of the Federal rate, we assumed that it would elect to bypass the transition methodology and transition immediately to prospective payments.

Then we applied the 6.6 percent reduction to payment to account for the effect of the 5-year transition methodology and election of payment

based on 100 percent of the Federal rate on Medicare program payments to each LTCH's estimated payments under the prospective payment system (section X.K.2.h. of this final rule). The impact based on our projection of whether a LTCH will be paid based on the transition blend methodology or will elect payment based on 100 percent of the Federal rate for cost reporting periods beginning during FY 2003 is shown below in Table I.

In Table II below, we also show the impact if the LTCH prospective payment system were fully implemented in FY 2003; that is, as if there were an immediate transition to fully Federal prospective payments under the LTCH prospective payment system for FY 2003. Accordingly, the 6.6 percent reduction to account for the 5-year transition methodology on LTCHs' Medicare program payments was not applied to LTCHs' estimated payments under the prospective payment system. Furthermore, starting with cost reporting periods that begin during FY 2007, the 5-year transition period would have ended, and all LTCHs would be paid based on 100 percent of the standard Federal rate. All payment simulations reflect data trended to the midpoint FY 2003.

Tables I and II below illustrate the aggregate impact of the payment system among various classifications of LTCHs. The first column, LTCH Classification, identifies the type of LTCH. The second column lists the number of LTCHs of each classification type; the third column identifies the number of long-term care cases; and the fourth column shows the ratio of prospective payments to current payments.

As we discuss in section X.K. of this final rule, in accordance with section 307(a)(2) of Public Law 106–554, the increases to the hospital-specific target amounts and the cap on the target amounts for LTCHs provided for by section 307(a)(1) of Public Law 106–554, and the enhanced bonus payments for LTCHs provided for by section 122 of Public Law 106–113, were *not* taken into account in the development of the budget neutral standard Federal rate in the prospective payment system for LTCHs. However, as we noted above, for the purposes of these impact analyses, in estimating current payments under the TEFRA payment system, we took into consideration the increases to the hospital-specific target amounts and cap on the target amounts for LTCHs provided for by section 307(a)(1) of Public Law 106–554, and the enhanced bonus payments for LTCHs provided for by section 122 of Public Law 106–113. Including these provisions in our estimate of current payments to LTCHs under the TEFRA payment system increases payments to LTCHs' under the TEFRA payment system in the aggregate by approximately 3 percent. Since payments made to LTCHs under the LTCH prospective payment system must be budget neutral to payments made to LTCHs under the TEFRA payment system *without* the increases provided for by those provisions, the ''New Payment to Current Payment Ratio'' for all providers shown in Tables I and II below equals approximately 0.97 instead of 1.00.

TABLE I.—PROJECTED IMPACT REFLECTING 20 PERCENT OF PROSPECTIVE PAYMENTS AND 80 PERCENT OF CURRENT (TEFRA) PAYMENTS AND OPTION TO ELECT PAYMENT BASED ON 100 PERCENT OF THE FEDERAL RATE

LTCH classification	Number of LTCHs	Number of LTCH cases	New payment to current payment ratio
All Providers	194	72,149	0.9762
By Location:			
Rural	6	2,189	1.0539
Urban	188	69,960	0.9754
Large	121	50,296	0.9814
Other	67	19,664	0.9569
By participation date:			
After October 1993	125	42,617	0.9632
Before October 1983	17	7,841	1.0200
October 1983–September 1993	48	20,795	0.9908
Unknown	4	896	1.0261
By ownership control:			
Voluntary	49	19,073	0.9634
Proprietary	134	50,616	0.9769
Government	11	2,460	1.0633
By census region:			
New England	14	9,487	1.0289
Middle Atlantic	9	3,276	1.0405
South Atlantic	18	6,265	1.0067
East North Central	33	9,245	0.9994
East South Central	11	3,314	0.9860
West North Central	11	2,898	1.0006
West South Central	71	30,248	0.9415
Mountain	15	2,491	0.9647
Pacific	12	4,925	0.9729
By bed size:			
Beds: 0–24	20	3,119	0.9926
Beds: 25–49	81	20,659	0.9756
Beds: 50–74	19	7,433	0.9593
Beds: 75–124	27	13,248	0.9768
Beds: 125–199	23	13,035	0.9739
Beds: 200 +	24	14,655	0.9839

TABLE II.—PROJECTED IMPACT REFLECTING THE FULLY PHASED-IN PROSPECTIVE PAYMENTS

LTCH classification	Number of LTCHs	Number of LTCH cases	New payment to current payment ratio
All Providers	194	72,149	0.9767
By Location:			
Rural	6	2,189	1.0963
Urban	188	69,960	0.9740
Large	121	50,296	0.9833
Other	67	19,664	0.9505
By participation date:			
After October 1993	125	42,617	0.9566
Before October 1983	17	7,841	1.0560
October 1983–September 1993	48	20,795	0.9955
Unknown	4	896	0.9502
By ownership control:			
Voluntary	49	19,073	0.9641
Proprietary	134	50,616	0.9780
Government	11	2,460	1.0447
By census region:			
New England	14	9,487	1.0676
Middle Atlantic	9	3,276	1.0918
South Atlantic	18	6,265	1.0018
East North Central	33	9,245	1.0212
East South Central	11	3,314	1.0175
West North Central	11	2,898	1.0187
West South Central	71	30,248	0.9213
Mountain	15	2,491	0.9323
Pacific	12	4,925	0.9676
By bed size:			
Beds: 0–24	20	3,119	0.9827
Beds: 25–49	81	20,659	0.9838
Beds: 50–74	19	7,433	0.9125
Beds: 75–124	27	13,248	0.9687
Beds: 125–199	23	13,035	0.9955
Beds: 200 +	24	14,655	0.9909

5. Results

We have prepared the following summary of the impact (as shown in Table I) of the LTCH prospective payment system set forth in this final rule.

a. Location

The majority of LTCHs are in urban areas. Approximately 3 percent of the LTCHs are identified as being located in a rural area, and approximately 3 percent of all LTCH cases are treated in these rural hospitals. Impact analysis in Table I shows that the new payment to current payment ratio is estimated to be 1.0539 for rural LTCHs, and 0.9754 for urban LTCHs. About 70 percent of the LTCH cases are in LTCHs located in large urban areas. Large urban LTCHs have a new payment to current payment ratio of 0.9814, while other urban LTCHs have a new payment to current payment ratio of 0.9569. (Table I)

b. Participation Date

LTCHs are grouped by participation date into three categories: (1) Before October 1983; (2) between October 1983 and September 1993; and (3) after October 1993. We did not have sufficient OSCAR data on four LTCHs, which we labeled as an ''Unknown'' category. The majority, approximately 59 percent, of the LTCH cases are in hospitals that began participating after October 1993 and have a new payment to current payment ratio of 0.9632 and approximately 11 percent of the cases are in LTCHs that began participating in Medicare before October 1983 with a new payment to current payment ratio of 1.0200. (Table I)

c. Ownership Control

LTCHs are grouped into three categories based on ownership control type: (1) Voluntary; (2) proprietary; and (3) government. We expect that government LTCHs will gain the most from the payment system with an estimated new payment to current payment ratio of 1.0633, although only approximately 6 percent of LTCHs are government run. Voluntary and proprietary LTCHs have a new payment to current payment ratio of 0.9634 and 0.9769, respectively. (Table I)

d. Census Region

LTCHs located in most regions are expected to have a new payment to current payment ratio of greater than 0.97 percent. Of the nine census regions, we expect that LTCHs in the Middle Atlantic Region will have the highest new payment to current payment ratio (1.0405). We expect only LTCHs in the West South Central and Mountain Regions will have a new payment to current payment ratio of less than 0.97 percent (0.9415 and 0.9647, respectively). (Table I)

e. Bed Size

LTCHs were grouped into six categories based on bed size: 0–24 beds, 25–49 beds, 50–74 beds, 75–124 beds, 125–199 beds, and 200+ beds. The new payment to current payment ratios for all bed size categories is expected to be greater than 0.95 percent. The majority of LTCHs were in bed size categories where the new payment to current payment ratio is estimated to be greater than 0.97 percent. LTCHs with between 0–24 beds have the highest estimated new payment to current payment ratio (0.9926), while LTCHs with between 50–74 beds have the lowest estimated new payment to current payment ratio (0.9593). (Table I)

6. Effect on the Medicare Program

Based on actuarial projections resulting from our experience with other prospective payment systems, we estimate that Medicare spending (total Medicare program payments) for LTCH services over the next 5 years would be:

Fiscal year	Estimated payments ($ in millions)
2003	$1,590
2004	1,690
2005	1,790
2006	1,900
2007	2,000

These estimates are based on the current estimate of increase in the excluded hospital market basket of 3.5 percent for FY 2003, 3.4 percent for FY 2004, 3.5 percent for FY 2005, 3.2 percent for FY 2006, and 2.9 percent for FY 2007. We estimate that there would be an increase in Medicare beneficiary enrollment of 1.7 percent in FY 2003, 1.8 percent in FY 2004, 1.5 percent in FYs 2005 and 2006, and 1.9 percent in FY 2007, and an estimated increase in the total number of LTCHs.

Consistent with the statutory requirement for budget neutrality, we intend for estimated aggregate payments under the LTCH prospective payment system to equal the estimated aggregate payments that would be made if the LTCH prospective payment system were not implemented. Our methodology for estimating payments for purposes of the budget neutrality calculations uses the best available data and necessarily reflects assumptions. When the LTCH prospective payment system is implemented, we will monitor payment data and evaluate the ultimate accuracy of the assumptions used to calculate the budget neutrality calculations (for example, inflation factors, intensity of services provided, or behavioral response to the implementation of the LTCH prospective payment system, as discussed in section X.K. of this final rule). To the extent the assumptions significantly differ from actual experience, the aggregate amount of actual payments may turn out to be significantly higher or lower than the estimates on which the budget neutrality calculations are based.

Section 123 of Public Law 106–113 and section 307 of Public Law 106–554 provide the Secretary extremely broad authority in developing the LTCH prospective payment system, including the authority for appropriate adjustments. In accordance with this broad authority, we plan to discuss in a future proposed rule a possible one-time prospective adjustment to the LTCH prospective payment system rates so that the effect of the difference between actual payments and estimated payments for the first year of LTCH prospective payment system is not perpetuated in the prospective payment system rates for future years. (We note that in other contexts (for example, outlier payments under the acute care hospital inpatient prospective payment system) differences between estimated payments and actual payments for a given year are not built into the prospective payment system rates for subsequent years. However, the statutory ratesetting scheme under the LTCH prospective payment system is very different than in other contexts.)

7. Effect on Medicare Beneficiaries

Under the LTCH prospective payment system, hospitals will receive payment based on the average resources consumed by patients for each diagnosis. We do not expect any changes in the quality of care or access to services for Medicare beneficiaries under the LTCH prospective payment system, but we expect that paying prospectively for LTCH services will enhance the efficiency of the Medicare program.

8. Computer Hardware and Software

We do not anticipate that hospitals will incur additional systems operating costs in order to effectively participate in the prospective payment system for LTCHs. We believe that LTCHs possess the computer hardware capability to handle the LTC–DRGs, computerization, data transmission, and GROUPER software requirements. Our belief is based upon indications that approximately 99 percent of hospital inpatient claims currently are submitted electronically. Moreover, LTCHs have the option of purchasing data collection software that can be used to support other clinical or operational needs (for example, care planning, quality assurance, or billing) or other regulatory requirements for reporting patient information.

C. Alternatives Considered

Section 123 of Public Law 106–113 specifies that the case-mix adjusted prospective payment system must be a per discharge system based on DRGs, and section 307(b) of Public Law 106–554 directs the Secretary to examine the ''feasibility and the impact of basing payment under such a system on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of LTCH patients as well as the use of the most recently available hospital discharge data.'' Section 307(b) further requires the Secretary to ''examine'' appropriate adjustments to the system such as adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment consistent with section 1886(d)(5)(F) of the Act. Generally, the statute confers broad authority on the Secretary in designing the key elements of the system. Our considerations of the patient classification systems are explained in detail in section IX.G. of this final rule. Our evaluation of alternative features and adjustment factors for the LTCH prospective payment system are set forth in section X.J. of this final rule. In the March 22, 2002 proposed rule, we solicited public comments regarding our proposed policies and system design. Those public comments and our responses are located in the appropriate subject sections.

D. Executive Order 12866

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

XIII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

In the March 22, 2002 proposed rule, we solicited and received no public comments on each of these issues for the following proposed sections that contain information collection requirements:

§§ 412.116(a)(4) and 412.541(b) and (e) Method of payment: periodic interim payments and accelerated payments.

Under § 412.116(a)(4), for cost reporting periods beginning on or after October 1, 2002, payments to a LTCH for inpatient hospital services under the prospective payment system would be made as described in § 412.541. Section 412.541(b) provides that a LTCH may receive periodic interim payments for Part A services, subject to the provisions of § 413.64(h). Section 413.64(h) specifies that the request for periodic interim payments must be made to the fiscal intermediary. Section 412.541(e) states that, upon request, an accelerated payment may be made to a LTCH that is not receiving a periodic interim payment if the LTCH is experiencing financial difficulties.

We estimate that the burden associated with this provision is the time it takes a LTCH to prepare and submit its request for periodic interim payments or accelerated payments. We estimate that approximately three LTCHs would request periodic interim payments under the prospective payment system and that it would take each hospital 1 hour to prepare and make the request. We estimate that approximately two LTCHs would request accelerated payments and that it would take them approximately 30 minutes each to prepare and submit their written request, for a total estimated annual burden of 1 hour.

Both of these sections of the regulations are exempt from the PRA since the two requirements would affect less than 10 LTCHs per year (see 5 CFR Part 1320.3(c)(4)).

§ 412.508(b)(1) and (b)(2) Content of physician acknowledgement statement and completion of acknowledgement.

Section 412.508(b) provides that a physician must complete an acknowledgement statement that each patient's principal and secondary diagnoses and major procedures performed are documented by the physician's entries in the patient's medical record. Section 412.508(b)(1) specifies that when a claim is submitted, the LTCH must have a signed and dated acknowledgement from the attending physician that the physician has received notice of the required acknowledgement of entries in the patient's medical record and that anyone who misrepresents, falsifies, or conceals essential information required for payment of Federal funds may be subject to fine, imprisonment, or civil penalty under applicable laws. Section 412.508(b)(2) specifies that the acknowledgement must be completed by the physician at the time the physician is granted admitting privileges at the hospital or before or at the time the physician admits his or her first patient. In addition, under this section, there is a requirement for LTCHs to enter into an agreement with a QIO.

As stipulated under section 4202(b) ''Waiver of Paperwork Reduction,'' of Public Law 100–203, these collection requirements are exempt from the PRA.

§ 412.511 Reporting and recordkeeping requirements.

Under § 412.511, a LTCH subject to the prospective payment system described in this final rule must meet the recordkeeping and cost reporting requirements of §§ 413.20 and 413.24. While §§ 413.20 and 413.24 are subject to the PRA, the burden associated with these requirements are currently captured in approved collections 0938–0463, expiration date of May 31, 2004; 0938–0758, expiration date of February 28, 2005; 0938–0037, expiration date of February 28, 2005; and 0938–0050 expiration date of May 31, 2004.

§ 412.533(b) Transition payments: Election not to be paid under the transitional period methodology.

Under § 412.533(b), a LTCH may elect to be paid based on 100 percent of the Federal prospective payment rate at the start of any of its cost reporting periods during a 5-year transition period beginning on or after October 1, 2002, and before October 1, 2007, without regard to the transitional percentages. Section 412.533(b) specifies that the request to make the election must be made in writing to the Medicare intermediary by the LTCH and received no later than November 1, 2002 for cost reporting periods beginning on or after October 1, 2002 through November 30, 2002 and no later than 30 days before the beginning of the cost reporting period for cost reporting periods beginning on or after December 1, 2002.

We estimate that 94 LTCHs would make a request to elect to receive the full Federal prospective payment rate and that it would take each LTCH approximately 15 minutes each to prepare and submit their written request, for a total estimated annual burden of 24 hours.

Based on comments received and our analysis of planned monitoring activities, in this final rule we have added an additional requirement regarding collection of information at § 412.22 concerning a LTCH's (or a LTCH satellite's) notification to its Medicare fiscal intermediary and CMS of its co-located status. Under §§ 412.22(e)(6) and (h)(5), a LTCH or a satellite of a LTCH that occupies space in a building used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital must notify its fiscal intermediary and CMS in writing of its co-location within 60 days of its first cost reporting period that begins on or after October 1, 2002.

We estimate that the burden associated with this provision is the time it would take for a LTCH or a satellite of a LTCH to prepare and submit its notification to its fiscal intermediary and CMS. At this time, we estimate that 100 LTCHs and satellites of LTCHs will take 15 minutes each to comply with these provisions for a total burden of 25 hours. The total burden associated with the collection requirements referenced in this rule is 49 annual hours.

We have submitted the information collection requirements under §§ 412.22 and 412.533 to the Office of Management and Budget (OMB) for review under the authority of PRA. These requirements are not effective until they are approved by OMB.

If you have any comments on the information collection requirements of §§ 412.22(e)(6) and (h)(5), please mail one original and three copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Standards and Security Group, Office of Regulations Development and Issuances, 7500 Security Boulevard, Room N2–14–26, Baltimore, MD 21244–1850, Attn: John Burke, CMS–1177–F; and

Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 Attn: Brenda Aguilar, CMS Desk Officer

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 476

Health care, Health professional, Health record, Peer Review Organizations (PRO), Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR Chapter IV is amended as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

2. Section § 412.1 is amended by:
a. Adding a new paragraph (a)(3);
b. Redesignating paragraph (b)(12) as paragraph (b)(13); and
c. Adding a new paragraph (b)(12).

§ 412.1 Scope of part.

(a) *Purpose.* * * *

(3) This part implements section 123 of Public Law 106–113, which provides for the establishment of a prospective payment system for the costs of inpatient hospital services furnished to Medicare beneficiaries by long-term care hospitals described in section 1886(d)(1)(B)(iv) of the Act, for cost reporting periods beginning on or after October 1, 2002. This part also reflects the provisions of section 307 of Public Law 106–554, which state that the Secretary shall examine and may provide for appropriate adjustments to the long-term care hospital prospective payment system, including adjustments to diagnosis-related group (DRG) weights, area wage adjustments, geographic reclassification, outlier adjustments, updates, and disproportionate share adjustments consistent with section 1886(d)(5)(F) of the Act.

(b) *Summary of content.* * * *

(12) Subpart O of this part describes the prospective payment system specified in paragraph (a)(3) of this section for long-term care hospitals and sets forth the general methodology for paying for the operating and capital-related costs of inpatient hospital services furnished by long-term care hospitals, effective with cost reporting periods beginning on or after October 1, 2002.

* * * * *

Subpart B—Hospital Services Subject to and Excluded from the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital-Related Costs

3. Section 412.20 is amended by:
a. Revising paragraph (a).
b. Redesignating paragraph (c) as paragraph (d).
c. Adding a new paragraph (c).

§ 412.20 Hospital services subject to the prospective payment systems.

(a) Except for services described in paragraphs (b), (c), and (d) of this section, all covered inpatient hospital services furnished to beneficiaries during subject cost reporting periods are paid under the prospective payment systems specified in § 412.1(a)(1).

* * * * *

(c) Effective for cost reporting periods beginning on or after October 1, 2002, covered inpatient hospital services furnished to Medicare beneficiaries by a long-term care hospital that meets the conditions for payment of §§ 412.505 through 412.511 are paid under the prospective payment system described in subpart O of this part.

* * * * *

4. Section 412.22 is amended by revising paragraph (b) and adding a new paragraph (e)(6) and (h)(5) to read as follows:

§ 412.22 Excluded hospitals and hospital units: General rules.

* * * * *

(b) *Cost reimbursement.* Except for those hospitals specified in paragraph (c) of this section and §§ 412.20(b) and (c), all excluded hospitals (and excluded hospital units, as described in §§ 412.23 through 412.29) are reimbursed under the cost reimbursement rules set forth in part 413 of this subchapter, and are subject to the ceiling on the rate of hospital cost increases described in § 413.40 of this subchapter.

* * * * *

(e) *Hospitals-within-hospitals.* * * *

(6) *Notification of co-located status.* A long-term care hospital that occupies space in a building used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital and that meets the criteria of paragraphs (e)(1) through (e)(5) of this section must notify its fiscal intermediary and CMS in writing of its co-location within 60 days of its first cost reporting period that begins on or after October 1, 2002.

* * * * *

(h) *Satellite facilities.* * * *

(5) *Notification of co-located status.* A satellite of a long-term care hospital that occupies space in a building used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital and that meets the criteria of paragraphs (h)(1) through (h)(4) of this section must notify its fiscal intermediary and CMS in writing of its co-location within 60 days of its first cost reporting period beginning on or after October 1, 2002.

5. Section 412.23 is amended by revising paragraph (e) to read as follows:

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(e) *Long-term care hospitals.* A long-term care hospital must meet the requirements of paragraph (e)(1) and (e)(2) of this section and, where applicable, the additional requirements of § 412.22(e), to be excluded from the prospective payment systems specified in § 412.1(a)(1) and to be paid under the prospective payment system specified in § 412.1(a)(3) and in Subpart O of this part.

(1) *Provider agreements.* The hospital must have a provider agreement under Part 489 of this chapter to participate as a hospital; and

(2) *Average length of stay.* (i) The hospital must have an average Medicare inpatient length of stay of greater than 25 days (which includes all covered and noncovered days of stay of Medicare patients) as calculated under paragraph (e)(3) of this section; or

(ii) For cost reporting periods beginning on or after August 5, 1997, a hospital that was first excluded from the prospective payment system under this section in 1986 meets the length of stay criterion if it has an average inpatient length of stay for all patients, including both Medicare and non-Medicare inpatients, of greater than 20 days and demonstrates that at least 80 percent of its annual Medicare inpatient discharges in the 12-month cost reporting period ending in fiscal year 1997 have a principal diagnosis that reflects a finding of neoplastic disease as defined in paragraph (f)(1)(iv) of this section.

(3) *Calculation of average length of stay.* (i) Subject to the provisions of paragraphs (e)(3)(ii) and (e)(3)(iii) of this section, the average Medicare inpatient length of stay is calculated by dividing the total number of covered and noncovered days of stay of Medicare inpatients (less leave or pass days) by the number of total Medicare discharges for the hospital's most recent complete cost reporting period.

(ii) If a change in the hospital's Medicare average length of stay is indicated, the calculation is made by the same method for the immediately preceding 6-month period.

(iii) If a hospital has undergone a change of ownership (as described in § 489.18 of this chapter) at the start of a cost reporting period or at any time within the preceding 6 months, the hospital may be excluded from the prospective payment system as a long-

term care hospital for a cost reporting period if, for the 6 months immediately preceding the start of the period (including time before the change of ownership), the hospital has the required Medicare average length of stay, continuously operated as a hospital, and continuously participated as a hospital in Medicare.

(4) *Definition of new long-term care hospital.* For purposes of payment under the long-term care hospital prospective payment system under Subpart O of this part, a new long-term care hospital is a provider of inpatient hospital services that meets the qualifying criteria in paragraphs (e)(1) and (e)(2) of this section and, under present or previous ownership (or both), its first cost reporting period as a LTCH begins on or after October 1, 2002.

* * * * *

Subpart H—Payments to Hospitals Under the Prospective Payment Systems

6. In § 412.116, the heading of paragraph (a) is revised and a new paragraph (a)(4) is added to read as follows:

§ 412.116 Method of payment.

(a) *General rules.* * * *

(4) For cost reporting periods beginning on or after October 1, 2002, payments for inpatient hospital services furnished by a long-term care hospital that meets the conditions for payment of §§ 412.505 through 412.511 are made as described in § 412.521.

* * * * *

7. A new subpart O is added to read as follows:

Subpart O—Prospective Payment System for Long-Term Care Hospitals

Sec.

412.500 Basis and scope of subpart.
412.503 Definitions.
412.505 Conditions for payment under the prospective payment system for long-term care hospitals.
412.507 Limitation on charges to beneficiaries.
412.508 Medical review requirements.
412.509 Furnishing of inpatient hospital services directly or under arrangement.
412.511 Reporting and recordkeeping requirements.
412.513 Patient classification system.
412.515 LTC–DRG weighting factors.
412.517 Revision of LTC–DRG group classifications and weighting factors.
412.521 Basis of payment.
412.523 Methodology for calculating the Federal prospective payment rates.
412.525 Adjustments to the Federal prospective payment.
412.529 Special payment provisions for short-stay outliers.
412.531 Special payment provisions when an interruption of a stay occurs in a long-term care hospital.
412.532 Special payment provisions for patients who are transferred to onsite providers and readmitted to a long-term care hospital.
412.533 Transition payments.
412.535 Publication of the Federal prospective payment rates.
412.541 Method of payment under the long-term care hospital prospective payment system.

Subpart O—Prospective Payment System for Long-Term Care Hospitals

§ 412.500 Basis and scope of subpart.

(a) *Basis.* This subpart implements section 123 of Public Law 106–113, which provides for the implementation of a prospective payment system for long-term care hospitals described in section 1886(d)(1)(B)(iv) of the Act. This subpart also reflects the provisions of section 307 of Public Law 106–554, which state that the Secretary shall examine and may provide for appropriate adjustments to that system, including adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and disproportionate share adjustments consistent with section 1886(d)(5)(F) of the Act.

(b) *Scope.* This subpart sets forth the framework for the prospective payment system for long-term care hospitals, including the methodology used for the development of payment rates and associated adjustments and related rules. Under this system, for cost reporting periods beginning on or after October 1, 2002, payment for the operating and capital-related costs of inpatient hospital services furnished by long-term care hospitals is made on the basis of prospectively determined rates and applied on a per discharge basis.

§ 412.503 Definitions.

As used in this subpart—

CMS stands for the Centers for Medicare & Medicaid Services.

Discharge. A Medicare patient in a long-term care hospital is considered discharged when—

(1) For purposes of the long-term care hospital qualification calculation, as described in § 412.23(e)(3), the patient is formally released;

(2) For purposes of payment, as described in § 412.521(b), the patient stops receiving Medicare-covered long-term care services; or

(3) The patient dies in the long-term care facility.

LTC–DRG stands for the diagnosis-related group used to classify patient discharges from a long-term care hospital based on clinical characteristics and average resource use, for prospective payment purposes.

Outlier payment means an additional payment beyond the standard Federal prospective payment for cases with unusually high costs.

QIO (formerly PRO or Peer Review Organization) stands for the Quality Improvement Organization.

§ 412.505 Conditions for payment under the prospective payment system for long-term care hospitals.

(a) *Long-term care hospitals subject to the prospective payment system.* To be eligible to receive payment under the prospective payment system specified in this subpart, a long-term care hospital must meet the criteria to be classified as a long-term care hospital set forth in § 412.23(e) for exclusion from the acute care hospital inpatient prospective payment systems specified in § 412.1(a)(1). This condition is subject to the special payment provisions of § 412.22(c), the provisions on change in hospital status of § 412.22(d), the provisions related to hospitals-within-hospitals under § 412.22(e), and the provisions related to satellite facilities under § 412.22(h).

(b) *General requirements.* (1) Effective for cost reporting periods beginning on or after October 1, 2002, a long-term care hospital must meet the conditions for payment of this section, § 412.22(e)(6) and (h)(5), and §§ 412.507 through § 412.511 to receive payment under the prospective payment system described in this subpart for inpatient hospital services furnished to Medicare beneficiaries.

(2) If a long-term care hospital fails to comply fully with these conditions for payment with respect to inpatient hospital services furnished to one or more Medicare beneficiaries, CMS may withhold (in full or in part) or reduce Medicare payment to the hospital.

§ 412.507 Limitation on charges to beneficiaries.

(a) *Prohibited charges.* Except as provided in paragraph (b) of this section, a long-term care hospital may not charge a beneficiary for any covered services for which payment is made by Medicare, even if the hospital's costs of furnishing services to that beneficiary are greater than the amount the hospital is paid under the prospective payment system. If Medicare has paid the full LTC–DRG payment, that payment applies to the hospital's costs for services furnished until the high-cost outlier threshold is met. If Medicare pays less than the full LTC–DRG payment, that payment only applies to the hospital's costs for those costs or

days used to calculate the Medicare payment.

(b) *Permitted charges.* (1) A long-term care hospital that receives a full LTC–DRG payment under this subpart for covered days in a hospital stay may charge the Medicare beneficiary only for the applicable deductible and coinsurance amounts under §§ 409.82, 409.83, and 409.87 of this subchapter, and for items and services as specified under § 489.20(a) of this chapter.

(2) A long-term care hospital that receives less than the full LTC–DRG payment for a short-stay case, in accordance with § 412.529, may only charge the Medicare beneficiary for the applicable deductible and coinsurance under §§ 409.82, 409.83, and 409.87 of this subchapter, for items and services as specified under § 489.20(a) of this chapter, and for services provided during the stay that were not the basis for the short-stay payment.

§ 412.508 Medical review requirements.

(a) *Admission and quality review.* A long-term care hospital must have an agreement with a QIO to have the QIO review, on an ongoing basis, the following:

(1) The medical necessity, reasonableness, and appropriateness of hospital admissions and discharges.

(2) The medical necessity, reasonableness, and appropriateness of inpatient hospital care for which additional payment is sought under the outlier provisions of §§ 412.523(d)(1) and 412.525(a).

(3) The validity of the hospital's diagnostic and procedural information.

(4) The completeness, adequacy, and quality of the services furnished in the hospital.

(5) Other medical or other practices with respect to beneficiaries or billing for services furnished to beneficiaries.

(b) *Physician acknowledgement.* Payment under the long-term care hospital prospective payment system is based in part on each patient's principal and secondary diagnoses and major procedures performed, as evidenced by the physician's entries in the patient's medical record. The hospital must assure that physicians complete an acknowledgement statement to this effect in accordance with paragraphs (b)(1) and (b)(2) of this section.

(1) *Content of physician acknowledgement statement.* When a claim is submitted, the hospital must have on file a signed and dated acknowledgement from the attending physician that the physician has received the following notice:

Notice to Physicians: Medicare payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature in the medical record. Anyone who misrepresents, falsifies, or conceals essential information required for payment of Federal funds, may be subject to fine, imprisonment, or civil penalty under applicable Federal laws.

(2) *Completion of acknowledgement.* The acknowledgement must be completed by the physician at the time that the physician is granted admitting privileges at the hospital, or before or at the time the physician admits his or her first patient. Existing acknowledgements signed by physicians already on staff remain in effect as long as the physician has admitting privileges at the hospital.

(c) *Denial of payment as a result of admissions and quality review.*

(1) If CMS determines, on the basis of information supplied by a QIO, that a hospital has misrepresented admissions, discharges, or billing information, or has taken an action that results in the unnecessary admission or unnecessary multiple admissions of an individual entitled to benefits under Part A, or other inappropriate medical or other practices with respect to beneficiaries or billing for services furnished to beneficiaries, CMS may, as appropriate—

(i) Deny payment (in whole or in part) under Part A with respect to inpatient hospital services provided for an unnecessary admission or subsequent readmission of an individual; or

(ii) Require the hospital to take other corrective action necessary to prevent or correct the inappropriate practice.

(2) When payment with respect to admission of an individual patient is denied by a QIO under paragraph (c)(1) of this section, and liability is not waived in accordance with §§ 411.400 through 411.402 of this chapter, notice and appeals are provided under procedures established by CMS to implement the provisions of section 1155 of the Act, Right to Hearing and Judicial Review.

(3) A determination under paragraph (c)(1) of this section, if it is related to a pattern of inappropriate admissions and billing practices that has the effect of circumventing the prospective payment system, is referred to the Department's Office of Inspector General for handling in accordance with § 1001.301 of this title.

§ 412.509 Furnishing of inpatient hospital services directly or under arrangement.

(a) Subject to the provisions of § 412.521(b), the applicable payments made under this subpart are payment in full for all inpatient hospital services, as defined in § 409.10 of this chapter. Inpatient hospital services do not include the following:

(1) Physicians' services that meet the requirements of § 415.102(a) of this subchapter for payment on a fee schedule basis.

(2) Physician assistant services, as defined in section 1861(s)(2)(K)(i) of the Act.

(3) Nurse practitioners and clinical nurse specialist services, as defined in section 1861(s)(2)(K)(ii) of the Act.

(4) Certified nurse midwife services, as defined in section 1861(gg) of the Act.

(5) Qualified psychologist services, as defined in section 1861(ii) of the Act.

(6) Services of an anesthetist, as defined in § 410.69 of this subchapter.

(b) Medicare does not pay any provider or supplier other than the long-term care hospital for services furnished to a Medicare beneficiary who is an inpatient of the hospital except for services described in paragraphs (a)(1) through (a)(6) of this section.

(c) The long-term care hospital must furnish all necessary covered services to the Medicare beneficiary who is an inpatient of the hospital either directly or under arrangements (as defined in § 409.3 of this subchapter).

§ 412.511 Reporting and recordkeeping requirements.

A long-term care hospital participating in the prospective payment system under this subpart must meet the recordkeeping and cost reporting requirements of §§ 412.22(e)(6), 412.22(h)(5), 413.20, and 413.24 of this subchapter.

§ 412.513 Patient classification system.

(a) *Classification methodology.* CMS classifies specific inpatient hospital discharges from long-term care hospitals by long-term care diagnosis-related groups (LTC–DRGs) to ensure that each hospital discharge is appropriately assigned based on essential data abstracted from the inpatient bill for that discharge.

(b) *Assignment of discharges to LTC–DRGs.*

(1) The classification of a particular discharge is based, as appropriate, on the patient's age, sex, principal diagnosis (that is, the diagnosis established after study to be chiefly responsible for causing the patient's admission to the hospital), secondary diagnoses, procedures performed, and the patient's discharge status.

(2) Each discharge from a long-term care hospital is assigned to only one LTC-DRG (related, except as provided in paragraph (b)(3) of this section, to the

patient's principal diagnosis), regardless of the number of conditions treated or services furnished during the patient's stay.

(3) When the discharge data submitted by a hospital show a surgical procedure unrelated to a patient's principal diagnosis, the bill is returned to the hospital for validation and reverification. The LTC–DRG classification system provides a LTC–DRG, and an appropriate weighting factor, for those cases for which none of the surgical procedures performed are related to the principal diagnosis.

(c) *Review of LTC–DRG assignment.*

(1) A hospital has 60 days after the date of the notice of the initial assignment of a discharge to a LTC–DRG to request a review of that assignment. The hospital may submit additional information as a part of its request.

(2) The intermediary reviews that hospital's request and any additional information and decides whether a change in the LTC–DRG assignment is appropriate. If the intermediary decides that a different LTC–DRG should be assigned, the case will be reviewed by the appropriate QIO as specified in § 476.71(c)(2) of this chapter.

(3) Following the 60-day period described in paragraph (c)(1) of this section, the hospital may not submit additional information with respect to the DRG assignment or otherwise revise its claim.

§ 412.515 LTC–DRG weighting factors.

For each LTC–DRG, CMS assigns an appropriate weight that reflects the estimated relative cost of hospital resources used within that group compared to discharges classified within other groups.

§ 412.517 Revision of LTC-DRG group classifications and weighting factors.

CMS adjusts the classifications and weighting factors annually to reflect changes in—

(a) Treatment patterns;

(b) Technology;

(c) Number of discharges; and

(d) Other factors affecting the relative use of hospital resources.

§ 412.521 Basis of payment.

(a) *Method of payment.*

(1) Under the prospective payment system, long-term care hospitals receive a predetermined payment amount per discharge for inpatient services furnished to Medicare beneficiaries.

(2) The amount of payment under the prospective payment system is based on the Federal payment rate established in accordance with § 412.523, including adjustments described in § 412.525, and, if applicable during a transition period, on a blend of the Federal payment rate and the cost-based reimbursement rate described in § 412.533.

(b) *Payment in full.*

(1) The payment made under this subpart represents payment in full (subject to applicable deductibles and coinsurance described in subpart G of part 409 of this subchapter) for covered inpatient operating costs as described in § 412.2(c) and capital-related costs described in subpart G of part 413 of this subchapter associated with furnishing Medicare covered services in long-term care hospitals.

(2) In addition to payment based on prospective payment rates, long-term care hospitals may receive payments separate from payments under the prospective payment system for the following:

(i) The costs of approved medical education programs described in §§ 413.85, 413.86, and 413.87 of this subchapter.

(ii) Bad debts of Medicare beneficiaries, as provided in § 413.80 of this subchapter.

(iii) A payment amount per unit for blood clotting factor provided to Medicare inpatients who have hemophilia.

(iv) Anesthesia services furnished by hospital employed nonphysician anesthetists or obtained under arrangements, as specified in § 412.113(c)(2).

(v) The costs of photocopying and mailing medical records requested by a QIO, in accordance with § 476.78(c) of this chapter.

(c) *Payment by workers' compensation, automobile medical, no-fault or liability insurance or an employer group health plan primary to Medicare.* If workers' compensation, automobile medical, no-fault, or liability insurance or an employer group health plan that is primary to Medicare pays in full or in part, payment is determined in accordance with the guidelines specified in § 412.120(b).

(d) *Effect of change of ownership on payments under the prospective payment system.* When a hospital's ownership changes, as described in § 489.18 of this chapter, the following rules apply:

(1) Payment for the operating and capital-related costs of inpatient hospital services for each patient, including outlier payments as provided in § 412.525 and payments for hemophilia clotting factor costs as provided in paragraph (b)(2)(iii) of this section, are made to the entity that is the legal owner on the date of discharge. Payments are not prorated between the buyer and seller.

(i) The owner on the date of discharge is entitled to submit a bill for all inpatient hospital services furnished to a beneficiary regardless of when the beneficiary's coverage began or ended during a stay, or of how long the stay lasted.

(ii) Each bill submitted must include all information necessary for the intermediary to compute the payment amount, whether or not some of that information is attributable to a period during which a different party legally owned the hospital.

(2) Other payments for the direct costs of approved medical education programs, bad debts, anesthesia services furnished by hospital employed nonphysician anesthetists, and costs of photocopying and mailing medical records to the QIO as provided for under paragraphs (b)(2)(i), (ii), (iv), and (v) of this section are made to each owner or operator of the hospital (buyer and seller) in accordance with the principles of reasonable cost reimbursement.

§ 412.523 Methodology for calculating the Federal prospective payment rates.

(a) *Data used.* To calculate the initial prospective payment rates for inpatient hospital services furnished by long-term care hospitals, CMS uses—

(1) The best Medicare data available; and

(2) A rate of increase factor to adjust for the most recent estimate of increases in the prices of an appropriate market basket of goods and services included in covered inpatient long-term care hospital services.

(b) *Determining the average costs per discharge for FY 2003.* CMS determines the average inpatient operating and capital-related costs per discharge for which payment is made to each inpatient long-term care hospital using the available data under paragraph (a)(1) of this section. The cost per discharge is adjusted to FY 2003 by a rate of increase factor, described in paragraph (a)(2) of this section, under the update methodology described in section 1886(b)(3)(B)(ii) of the Act for each year.

(c) *Determining the Federal prospective payment rates.*

(1) *General.* The Federal prospective payment rates will be established using a standard payment amount referred to as the standard Federal rate. The standard Federal rate is a standardized payment amount based on average costs from a base year that reflects the combined aggregate effects of the weighting factors and other adjustments.

(2) *Update the cost per discharge.* CMS applies the increase factor

described in paragraph (a)(2) of this section to each hospital's cost per discharge determined under paragraph (b) of this section to compute the cost per discharge for FY 2003. Based on the updated cost per discharge, CMS estimates the payments that would have been made to each hospital for FY 2003 under Part 413 of this chapter without regard to the prospective payment system implemented under this subpart.

(3) *Computation of the standard Federal rate.* The standard Federal rate is computed as follows:

(i) *For FY 2003.* Based on the updated costs per discharge and estimated payments for FY 2003 determined in paragraph (c)(2) of this section, CMS computes a standard Federal rate for FY 2003 that reflects, as appropriate, the adjustments described in paragraph (d) of this section.

(ii) *For fiscal years after FY 2003.* The standard Federal rate for fiscal years after FY 2003 will be the standard Federal rate for the previous fiscal year, updated by the increase factor described in paragraph (a)(2) of this section, and adjusted as appropriate as described in paragraph (d) of this section.

(4) *Determining the Federal prospective payment rate for each LTC–DRG.* The Federal prospective payment rate for each LTC–DRG is the product of the weighting factors described in § 412.515 and the standard Federal rate described in paragraph (c)(3) of this section.

(d) *Adjustments to the standard Federal rate.* The standard Federal rate described in paragraph (c)(3) of this section will be adjusted for—

(1) *Outlier payments.* CMS adjusts the standard Federal rate by a reduction factor of 8 percent, the estimated proportion of outlier payments under the long-term care hospital prospective payment system, as described in § 412.525(a).

(2) *Budget neutrality.* CMS adjusts the Federal prospective payment rates for FY 2003 so that aggregate payments under the prospective payment system are estimated to equal the amount that would have been paid to long-term care hospitals under Part 413 of this subchapter without regard to the prospective payment system implemented under this subpart, excluding the effects of sections 1886(b)(2) and (b)(3) of the Act.

(3) The Secretary will review payments under this prospective payment system and may make a one-time prospective adjustment to the LTCH prospective payment system rates by October 1, 2006, so that the effect of any significant difference between actual payments and estimated payments for the first year of the LTCH prospective payment system is not perpetuated in the prospective payment rates for future years.

(e) *Calculation of the adjusted Federal prospective payment.* For each discharge, a long-term care hospital's Federal prospective payment is computed on the basis of the Federal prospective payment rate multiplied by the relative weight of the LTC–DRG assigned for that discharge. A hospital's Federal prospective payment rate will be adjusted, as appropriate, to account for outliers and other factors as specified in § 412.525.

§ 412.525 Adjustments to the Federal prospective payment.

(a) *Adjustments for high-cost outliers.* CMS provides for an additional payment to a long-term care hospital if its estimated costs for a patient exceed the adjusted LTC–DRG payment plus a fixed-loss amount. For each fiscal year, CMS determines a fix-loss amount that is the maximum loss that a hospital can incur under the prospective payment system for a case with unusually high costs. The additional payment equals 80 percent of the difference between the estimated cost of the patient case (determined by multiplying the hospital-specific cost-to-charge ratio by the Medicare allowable covered charge) and the sum of the adjusted Federal prospective payment for the LTC–DRG prospective payment system payment and the fixed-loss amount. No retroactive adjustments will be made to the outlier payments upon cost report settlement to account for differences between the estimated cost-to-charge-ratios and the actual cost-to-charge-ratios of the case.

(b) *Adjustments for Alaska and Hawaii.* CMS adjusts the Federal prospective payment for the effects of a higher cost of living for hospitals located in Alaska and Hawaii.

(c) *Adjustments for area levels.* The labor portion of a facility's Federal prospective payment is adjusted to account for geographical differences in the area wage levels using an appropriate wage index. The application of the wage index is made on the basis of the location of the facility in an urban or rural area as defined in § 412.62(f)(1)(ii) and (f)(1)(iii), respectively.

(d) *Special payment provisions.* CMS adjusts the Federal prospective payment to account for—

(1) Short-stay outliers, as provided for in § 412.529; and

(2) Interruption of a stay, as provided for in § 412.531.

§ 412.529 Special payment provision for short-stay outliers.

(a) *Short-stay outlier defined.* ''Short-stay outlier'' means a discharge with a length of stay in a long-term care hospital that is up to and including five-sixths of the geometric average length of stay for each LTC–DRG.

(b) *Adjustment to payment.* CMS adjusts the hospital's Federal prospective payment to account for any case that is determined to be a short-stay outlier, as defined in paragraph (a) of this section, under the methodology specified in paragraph (c) of this section.

(c) *Method for determining the payment amount.*

(1) The adjusted payment amount for a short-stay outlier is the least of the following amounts:

(i) 120 percent of the LTC–DRG specific per diem amount determined under paragraph (c)(2) of this section multiplied by the length of stay of the discharge;

(ii) 120 percent of the cost of the case determined under paragraph (c)(3) of this section; or

(iii) The Federal prospective payment for the LTC–DRG.

(2) CMS calculates a per diem amount for short-stay outliers for each LTC–DRG by dividing the product of the standard Federal payment rate and the LTC–DRG weight by the geometric mean length of stay of the specific LTC–DRG.

(3) To determine the cost of a case, CMS uses the hospital-specific cost-to-charge ratio and the Medicare allowable charges for the case.

(4) CMS will not make any retroactive adjustments to the payments for short-stay outliers to account for changes made to the LTCH's hospital-specific cost-to-charge ratio.

§ 412.531 Special payment provisions when an interruption of a stay occurs in a long-term care hospital.

(a) *Interruption of a stay defined.* ''Interruption of a stay'' means a stay at a long-term care hospital during which a Medicare inpatient is transferred upon discharge to an acute care hospital, an IRF, or a SNF for treatment or services that are not available in the long-term care hospital and returns to the same long-term care hospital within the applicable fixed day period specified in paragraphs (a)(1) through (a)(3) of this section.

(1) For a discharge to an acute care hospital, the applicable fixed day period is 9 days. The counting of the days begins on the day of discharge from the long-term care hospital and ends on the 9th day after the discharge.

(2) For a discharge to an IRF, the applicable fixed day period is 27 days.

The counting of the days begins on the day of discharge from the long-term care hospital and ends on the 27th day after the discharge.

(3) For a discharge to a SNF, the applicable fixed day period is 45 days. The counting of the days begins on the day of discharge from the long-term care hospital and ends on the 45th day after the discharge.

(b) *Methods of determining payments.*

(1) For purposes of determining a Federal prospective payment, any stay in a long-term care hospital that involves an interruption of the stay will be paid as a single discharge from the long-term care hospital. The number of days that a beneficiary spends in an acute care hospital, an IRF, or a SNF during an interruption of stay at a long-term care hospital is not included in determining the length of stay of the patient at the long-term care hospital. CMS will make only one LTC–DRG payment for all portions of a long-term care stay that involves an interruption of a stay. In accordance with § 412.513(b), payment will be based on the patient's LTC–DRG that would be determined by the principal diagnosis, which is the condition established after study to be chiefly responsible for occasioning the first admission of the patient to the hospital for care.

(2) If the total number of days of a patient's length of stay in a long-term care hospital prior to and following an interruption of a stay is up to and including five-sixths of the geometric average length of stay of the LTC–DRG, CMS will make a Federal prospective payment for a short-stay outlier in accordance with § 412.529(c).

(3) If the total number of days of a patient's length of stay in a long-term care hospital prior to and following an interruption of a stay exceeds five-sixths of the geometric average length of stay for the LTC–DRG, CMS will make one full Federal LTC–DRG prospective payment for the case. An additional payment will be made if the patient's stay qualifies as a high-cost outlier, as set forth in § 412.525(a).

(4) Notwithstanding the provisions of paragraph (a) of this section, if a patient who has been discharged from a long-term care hospital to another facility and is readmitted to the long-term care hospital for additional treatment or services in the long-term care hospital following the stay at the other facility, the subsequent admission to the long-term care hospital is considered a new stay, even if the case is determined to fall into the same LTC–DRG, and the long-term care hospital will receive two separate Federal prospective payments if one of the following conditions are met:

(i) The patient has a length of stay in the acute care hospital that exceeds 9 days from the day of discharge from the long-term care hospital;

(ii) The patient has a length of stay in the IRF that exceeds 27 days from the day of discharge from the long-term care hospital; or

(iii) The patient has a length of stay in the SNF that exceeds 45 days from the day of discharge from the long-term care hospital.

(c) *Payments to an acute care hospital, an IRF, or a SNF during an interruption of a stay.*

(1) Payment to the acute care hospital for the acute care hospital stay following discharge from the long-term care hospital will be paid in accordance with the acute care hospital inpatient prospective payment systems specified in § 412.1(a)(1).

(2) Payment to an IRF for the IRF stay following a discharge from the long-term care hospital will be paid in accordance with the IRF prospective payment system specified in § 412.624 of Subpart P of this part.

(3) Payment to a SNF for the SNF stay following a discharge from the long-term care hospital will be paid in accordance with the SNF prospective payment system specified in subpart J of Part 413 of this subchapter.

§ 412.532 Special payment provisions for patients who are transferred to onsite providers and readmitted to a long-term care hospital.

(a) The policies set forth in this section apply in the following situations:

(1) A long-term care hospital (including a satellite facility) that is co-located within an onsite acute care hospital, an onsite IRF, or an onsite psychiatric facility or unit that meets the definition of a hospital-within-a-hospital under § 412.22(e).

(2) A satellite facility, as defined in § 412.22(f), that is co-located with the long-term care hospital.

(3) A SNF, as defined in section 1819(a) of the Act, that is co-located with the long-term care hospital.

(b) As used in this section, ''co-located'' or ''onsite'' facility means a hospital or unit that occupies space in a building also used by another hospital or unit or in one or more buildings on the same campus, as defined in § 413.65(a)(2) of this subchapter, as buildings used by another hospital or unit.

(c) If, during a cost reporting period, a long-term care hospital (including a satellite facility) discharges patients to an acute care hospital co-located with the long-term care hospital, as described in paragraph (a) of this section, and subsequently directly readmits more than 5 percent (that is, in excess of 5.0 percent) of the total number of its Medicare inpatients discharged from that acute care hospital, all such discharges to the co-located acute care hospital and the readmissions to the long-term care hospital will be treated as one discharge for that cost reporting period and one LTC–DRG payment will be made on the basis of each patient's initial principal diagnosis.

(d) If, during a cost reporting period, a long-term care hospital (including a satellite facility) discharges patients to an onsite IRF, an onsite psychiatric hospital or unit, or an onsite SNF, as described in paragraph (a) of this section, and subsequently directly readmits more than 5 percent (that is, in excess of 5.0 percent) of the total number of its Medicare inpatients discharged from the onsite IRF, the onsite psychiatric hospital or unit, or the onsite SNF, all such discharges to any of these providers and the readmissions to the LTCH will be treated as one discharge for that cost reporting period and one LTC–DRG payment will be made on the basis of the patient's initial principal diagnosis.

(e) For purposes of calculating the payment per discharge, payment for the entire stay at the long-term care hospital will be paid as a full LTC–DRG payment under § 412.523 or a short-stay outlier under § 412.529, depending on the duration of the entire stay.

(f) If the long-term care hospital does not meet the 5-percent thresholds specified under paragraph (c) or (d) of this section for discharges to the specified onsite providers and readmissions to the long-term care hospital during a cost reporting period, payment under the long-term care prospective payment system will be made, where applicable, under the policies on interruption of a stay as specified in § 412.531.

(g) Payment to the onsite acute care hospital, the onsite IRF, the onsite psychiatric hospital or unit, and the onsite SNF for a beneficiary's stay in the specified onsite providers is subject to the applicable payment policies, including outliers and transfers, under the acute care hospital inpatient prospective payment system, the IRF prospective payment system, the SNF prospective payment system, or the excluded psychiatric hospital or unit cost-based reimbursement payment system, as appropriate.

(h) In determining whether a patient has previously been discharged and

then admitted, all prior discharges are considered, even if the discharge occurs late in one cost reporting period and the readmission occurs late in next cost reporting period.

(i) A long-term care hospital or a satellite of a long-term care hospital that occupies space in a building used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital and that meets the criteria of paragraphs (h)(1) through (h)(4) of this section must notify its fiscal intermediary and CMS in writing of its co-location within 60 days following the effective date of these regulations and within 60 days of a change in this co-located status.

§ 412.533 Transition payments.

(a) *Duration of transition periods.* Except for a long-term care hospital that makes an election under paragraph (c) of this section or for a long-term care hospital that is defined as new under § 412.23(e)(4), for cost reporting periods beginning on or after October 1, 2002, and before October 1, 2006, a long-term care hospital receives a payment comprised of a blend of the adjusted Federal prospective payment as determined under § 412.523, and the payment determined under the cost-based reimbursement rules under Part 413 of this subchapter.

(1) For cost reporting periods beginning on or after October 1, 2002 and before October 1, 2003, payment is based on 20 percent of the Federal prospective payment rate and 80 percent of the cost-based reimbursement rate.

(2) For cost reporting periods beginning on or after October 1, 2003 and before October 1, 2004, payment is based on 40 percent of the Federal prospective payment rate and 60 percent of the cost-based reimbursement rate.

(3) For cost reporting periods beginning on or after October 1, 2004 and before October 1, 2005, payment is based on 60 percent of the Federal prospective payment rate and 40 percent of the cost-based reimbursement rate.

(4) For cost reporting periods beginning on or after October 1, 2005 and before October 1, 2006, payment is based on 80 percent of the Federal prospective payment rate and 20 percent of the cost-based reimbursement rate.

(5) For cost reporting periods beginning on or after October 1, 2006, payment is based entirely on the adjusted Federal prospective payment rate.

(b) *Adjustments based on reconciliation of cost reports.* The cost-based percentage of the provider's total Medicare payment under paragraphs (a)(1) through (a)(4) of this section are subject to adjustments based on reconciliation of cost reports.

(c) *Election not to be paid under the transition period methodology.* A long-term care hospital may elect to be paid based on 100 percent of the Federal prospective rate at the start of any of its cost reporting periods during the 5-year transition periods specified in paragraph (a) of this section. Once a long-term care hospital elects to be paid based on 100 percent of the Federal prospective payment rate, it may not revert to the transition blend.

(1) *General requirement.* A long-term care hospital must notify its fiscal intermediary of its intent to elect to be paid based on 100 percent of the Federal prospective rate at the start of any of its cost reporting periods during the 5-year transition period specified in paragraph (a) of this section.

(2) *Notification requirement to make election.*

(i) The request by the long-term care hospital to make the election under paragraph (c)(1) of this section must be made in writing to the Medicare fiscal intermediary.

(ii) For cost reporting periods that begin on or after October 1, 2002 through November 30, 2002, the fiscal intermediary must receive the notification of the election before November 1, 2002.

(iii) For cost reporting periods that begin on or after December 1, 2002 through September 30, 2006, the fiscal intermediary must receive the notification of the election on or before the 30th day before the applicable cost reporting period begins.

(iv) The fiscal intermediary must receive the notification by the dates specified in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section, regardless of any postmarks or anticipated delivery dates. Requests received, postmarked, or delivered by other means after the dates specified in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section will not be accepted. If the date specified in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section falls on a day that the postal service or other delivery sources are not open for business, the long-term care hospital is responsible for allowing sufficient time for the delivery of the notification before the deadline.

(v) If a long-term care hospital's notification is not received by the dates specified in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section, payment will be based on the transition period rates specified in paragraphs (a)(1) through (a)(5) of this section.

(d) *Payments to new long-term care hospitals.* A new long-term care hospital, as defined in § 412.23(e)(4), will be paid based on 100 percent of the standard Federal rate, as described in § 412.523, with no transition payments, as described in § 412.533(a)(1) through (a)(5).

§ 412.535 Publication of the Federal prospective payment rates.

CMS publishes information pertaining to the long-term care hospital prospective payment system effective for each fiscal year in the **Federal Register**. This information includes the unadjusted Federal payment rates, the LTC–DRG classification system and associated weighting factors, and a description of the methodology and data used to calculate the payment rates. This information is published on or before August 1 prior to the beginning of each fiscal year.

§ 412.541 Method of payment under the long-term care hospital prospective payment system.

(a) *General rule.* Subject to the exceptions in paragraphs (b) and (c) of this section, long-term care hospitals receive payment under this subpart for inpatient operating costs and capital-related costs for each discharge only following submission of a discharge bill.

(b) *Periodic interim payments.*

(1) *Criteria for receiving periodic interim payments.*

(i) A long-term care hospital receiving payment under this subpart may receive periodic interim payments (PIP) for Part A services under the PIP method subject to the provisions of § 413.64(h) of this subchapter.

(ii) To be approved for PIP, the long-term care hospital must meet the qualifying requirements in § 413.64(h)(3) of this subchapter.

(iii) As provided in § 413.64(h)(5) of this subchapter, intermediary approval is conditioned upon the intermediary's best judgment as to whether payment can be made under the PIP method without undue risk of the PIP resulting in an overpayment to the provider.

(2) *Frequency of payment.*

(i) For long-term care hospitals approved for PIP and paid solely under Federal prospective payment system rates under § 412.533(b), the intermediary estimates the long-term care hospital's Federal prospective payments net after estimated beneficiary deductibles and coinsurance and makes biweekly payments equal to 1/26 of the total estimated amount of payment for the year.

(ii) For long-term care hospitals approved for PIP and paid using the blended payment schedule specified in § 412.533(a) for cost reporting periods beginning on or after October 1, 2002, and before October 1, 2006, the intermediary estimates the hospital's portion of the Federal prospective payments net and the hospital's portion of the reasonable cost-based reimbursement payments net, after beneficiary deductibles and coinsurance, in accordance with the blended transition percentages specified in § 412.533(a), and makes biweekly payments equal to 1/26 of the total estimated amount of both portions of payments for the year.

(iii) If the long-term care hospital has payment experience under the long-term care hospital prospective payment system, the intermediary estimates PIP based on that payment experience, adjusted for projected changes supported by substantiated information for the current year.

(iv) Each payment is made 2 weeks after the end of a biweekly period of service as described in § 413.64(h)(6) of this subchapter.

(v) The interim payments are reviewed at least twice during the reporting period and adjusted if necessary. Fewer reviews may be necessary if a hospital receives interim payments for less than a full reporting period. These payments are subject to final settlement.

(3) *Termination of PIP.* (i) *Request by the hospital.* Subject to paragraph (b)(1)(iii) of this section, a long-term care hospital receiving PIP may convert to receiving prospective payments on a non-PIP basis at any time.

(ii) *Removal by the intermediary.* An intermediary terminates PIP if the long-term care hospital no longer meets the requirements of § 413.64(h) of this subchapter.

(c) *Interim payments for Medicare bad debts and for Part A costs not paid under the prospective payment system.* For Medicare bad debts and for the costs of an approved education program, blood clotting factors, anesthesia services furnished by hospital-employed nonphysician anesthetists or obtained under arrangement, and photocopying and mailing medical records to a QIO, which are costs paid outside the prospective payment system, the intermediary determines the interim payments by estimating the reimbursable amount for the year based on the previous year's experience, adjusted for projected changes supported by substantiated information for the current year, and makes biweekly payments equal to 1/26 of the total estimated amount. Each payment is made 2 weeks after the end of the biweekly period of service as described in § 413.64(h)(6) of this subchapter. The interim payments are reviewed at least twice during the reporting period and adjusted if necessary. Fewer reviews may be necessary if a long-term care hospital receives interim payments for less than a full reporting period. These payments are subject to final cost settlement.

(d) *Special interim payment for unusually long lengths of stay.*

(1) *First interim payment.* A hospital that is not receiving periodic interim payments under paragraph (b) of this section may request an interim payment 60 days after a Medicare beneficiary has been admitted to the hospital. Payment for the interim bill is determined as if the bill were a final discharge bill.

(2) *Additional interim payments.* A hospital may request additional interim payments at intervals of at least 60 days after the date of the first interim bill submitted under paragraph (d)(1) of this section. Payment for these additional interim bills, as well as the final bill, is determined as if the bill were the final bill with appropriate adjustments made to the payment amount to reflect any previous interim payment made under the provisions of this paragraph.

(e) *Outlier payments.* Additional payments for outliers are not made on an interim basis. The outlier payments are made based on the submission of a discharge bill and represent final payment.

(f) *Accelerated payments.* (1) *General rule.* Upon request, an accelerated payment may be made to a long-term care hospital that is receiving payment under this subpart and is not receiving PIP under paragraph (b) of this section if the hospital is experiencing financial difficulties because of the following:

(i) There is a delay by the intermediary in making payment to the long-term care hospital.

(ii) Due to an exceptional situation, there is a temporary delay in the hospital's preparation and submittal of bills to the intermediary beyond its normal billing cycle.

(2) *Approval of payment.* A request by a long-term care hospital for an accelerated payment must be approved by the intermediary and by CMS.

(3) *Amount of payment.* The amount of the accelerated payment is computed as a percentage of the net payment for unbilled or unpaid covered services.

(4) *Recovery of payment.* Recovery of the accelerated payment is made by recoupment as long-term care hospital bills are processed or by direct payment by the long-term care hospital.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT FOR SKILLED NURSING FACILITIES

1. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i) and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

Subpart A—Introduction and General Rules

2. Section 413.1 is amended by:

a. Revising paragraph (d)(2)(ii).

b. Adding paragraphs (d)(2)(vi) and (d)(2)(vii).

§ 413.1 Introduction.

* * * * *

(d) * * *

(2) * * *

(ii) Payment to children's and psychiatric hospitals (as well as separate psychiatric units (distinct parts) of short-term general hospitals) that are excluded from the prospective payment systems under subpart B of Part 412 of this subchapter and hospitals outside the 50 states and the District of Columbia is on a reasonable cost basis, subject to the provisions of § 413.40.

* * * * *

(vi) For cost reporting periods beginning before October 1, 2002, payment to long-term care hospitals that are excluded under subpart B of Part 412 of this subchapter from the prospective payment systems is on a reasonable cost basis, subject to the provisions of § 413.40.

(vii) For cost reporting periods beginning on or after October 1, 2002, payment to the long-term hospitals that meet the condition for payment of §§ 412.505 through 412.511 of this subchapter is based on prospectively determined rates under subpart O of Part 412 of this subchapter.

* * * * *

Subpart C—Limits on Cost Reimbursement

3. Section 413.40 is amended by:

a. Republishing the introductory text of paragraph (a)(2)(i).

b. Adding a new paragraph (a)(2)(i)(D).

c. Amending paragraph (a)(2)(ii) by republishing the introductory text, removing ''and'' at the end of paragraph (a)(2)(ii)(A), removing the period and

adding ''; and'' at the end of paragraph (a)(2)(ii)(B), and adding a new paragraph (a)(2)(ii)(C).

d. Adding a new paragraph (a)(2)(iv).

§ 413.40 Ceiling on the rate of increase in hospital inpatient cost.

(a) *Introduction.* * * *

(2) *Applicability.* (i) This section is not applicable to—

* * * * *

(D) Long-term care hospitals, as defined in section 1886(d)(1)(B)(iv) of the Act, that are paid based on 100 percent of the Federal prospective payment rate for inpatient hospital services in accordance with section 123 of Public Law 106–113 and section 307 of Public Law 106–554 and § 412.533(b) and (c) of subpart O of Part 412 of this subchapter for cost reporting periods beginning on or after October 1, 2002.

(ii) For cost reporting periods beginning on or after October 1, 1983, this section applies to—

* * * * *

(C) Long-term care hospitals excluded from the prospective payment systems described in § 412.1(a)(1) of this subchapter and in accordance with § 412.23 of this subchapter, except as limited by paragraph (a)(2)(iv) of this section with respect to long-term care hospitals specified in § 412.23(e) of this subchapter.

* * * * *

(iv) For cost reporting periods beginning on or after October 1, 1983 and before October 1, 2002, this section applies to long-term care hospitals that are excluded from the prospective payment systems described in § 412.1(a)(1) of this subchapter. For cost reporting periods beginning on or after October 1, 2002, and before October 1, 2006, this section also applies to long-term care hospitals, subject to paragraph (a)(2)(i)(D) of this section.

* * * * *

Subpart E—Payments to Providers

4. Section § 413.64 is amended as follows:

a. The introductory text of paragraph (h)(2) is republished.

b. Paragraph (h)(2)(i) and the introductory text of paragraph (h)(3) are revised.

§ 413.64 Payment to providers: Specific rules.

* * * * *

(h) *Periodic interim payment method of reimbursement—* * * *

(2) *Covered services furnished on or after July 1, 1987.* Effective with claims received on or after July 1, 1987, the periodic interim payment (PIP) method is available for the following:

(i) Part A inpatient services furnished in hospitals that are excluded from the prospective payment systems described in § 412.1(a)(1) of this chapter, under subpart B of Part 412 of this subchapter or are paid under the prospective payment systems described in subparts O and P of Part 412 of this subchapter.

* * * * *

(3) Any participating provider furnishing the services described in paragraphs (h)(1) and (h)(2) of this section that establishes to the satisfaction of the intermediary that it meets the following requirements may elect to be reimbursed under the PIP method, beginning with the first month after its request that the intermediary finds administratively feasible:

* * * * *

PART 476—UTILIZATION AND QUALITY CONTROL REVIEW

1. The authority citation for Part 476 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 476.71 is amended by revising paragraph (c)(2) to read as follows:

§ 476.71 QIO review requirements.

* * * * *

(c) *Other duties and functions.* * * *

(2) As directed by CMS, the QIO must review changes in DRG and LTC–DRG assignments made by the intermediary under the provisions of §§ 412.60(d) and 412.513(c) of this chapter that result in the assignment of a higher-weighted DRG or a different LTC–DRG. The QIO's review must verify that the diagnostic and procedural information supplied by the hospital is substantiated by the information in the medical record.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: August 21, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: August 21, 2002.

Tommy G. Thompson,

Secretary.

Addendum

This addendum contains the tables referred to throughout the preamble to this final rule. The tables presented below are as follows:

Table 1.—Long-Term Care Hospital Wage Index for Urban Areas
Table 2.—Long-Term Care Hospital Wage Index for Rural Areas
Table 3.—LTC-DRG Relative Weights and Arithmetic Mean Length of Stay

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS

MSA	Urban area (constituent counties)	Full wage index [1]	⅕ wage index [2]
0040	Abilene, TX	0.7965	0.9593
	Taylor, TX		
0060	Aguadilla, PR	0.4683	0.8937
	Aguada, PR		
	Aguadilla, PR		
	Moca, PR		
0080	Akron, OH	0.9739	0.9948
	Portage, OH		
	Summit, OH		
0120	Albany, GA	1.0606	1.0121
	Dougherty, GA		
	Lee, GA		
0160	Albany-Schenectady-Troy, NY	0.8452	0.9690
	Albany, NY		
	Montgomery, NY		
	Rensselaer, NY		
	Saratoga, NY		
	Schenectady, NY		
	Schoharie, NY		
0200	Albuquerque, NM	0.9723	0.9945
	Bernalillo, NM		
	Sandoval, NM		
	Valencia, NM		
0220	Alexandria, LA	0.8015	0.9603
	Rapides, LA		
0240	Allentown-Bethlehem-Easton, PA	1.0014	1.0003
	Carbon, PA		
	Lehigh, PA		
	Northampton, PA		
0280	Altoona, PA	0.9100	0.9820
	Blair, PA		
0320	Amarillo, TX	0.8671	0.9734
	Potter, TX		
	Randall, TX		
0380	Anchorage, AK	1.2569	1.0514
	Anchorage, AK		
0440	Ann Arbor, MI	1.0959	1.0192
	Lenawee, MI		
	Livingston, MI		
	Washtenaw, MI		
0450	Anniston, AL	0.8276	0.9655
	Calhoun, AL		
0460	Appleton-Oshkosh-Neenah, WI	0.9241	0.9848
	Calumet, WI		
	Outagamie, WI		
	Winnebago, WI		
0470	Arecibo, PR	0.4630	0.8926
	Arecibo, PR		
	Camuy, PR		
	Hatillo, PR		
0480	Asheville, NC	0.9174	0.9835
	Buncombe, NC		
	Madison, NC		
0500	Athens, GA	0.9842	0.9968
	Clarke, GA		
	Madison, GA		
	Oconee, GA		
0520	Atlanta, GA	1.0043	1.0009
	Barrow, GA		
	Bartow, GA		
	Carroll, GA		
	Cherokee, GA		
	Clayton, GA		
	Cobb, GA		

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS—Continued

MSA	Urban area (constituent counties)	Full wage index [1]	1/5 wage index [2]
	Coweta, GA		
	DeKalb, GA		
	Douglas, GA		
	Fayette, GA		
	Forsyth, GA		
	Fulton, GA		
	Gwinnett, GA		
	Henry, GA		
	Newton, GA		
	Paulding, GA		
	Pickens, GA		
	Rockdale, GA		
	Spalding, GA		
	Walton, GA		
0560	Atlantic-Cape May, NJ	1.1297	1.0259
	Atlantic, NJ		
	Cape May, NJ		
0580	Auburn-Opelika, AL	0.8230	0.9646
	Lee, AL		
0600	Augusta-Aiken, GA-SC	0.9975	0.9995
	Columbia, GA		
	McDuffie, GA		
	Richmond, GA		
	Aiken, SC		
	Edgefield, SC		
0640	Austin-San Marcos, TX	0.9597	0.9919
	Bastrop, TX		
	Caldwell, TX		
	Hays, TX		
	Travis, TX		
	Williamson, TX		
0680	Bakersfield, CA	0.9406	0.9881
	Kern, CA		
0720	Baltimore, MD	0.9805	0.9961
	Anne Arundel, MD		
	Baltimore, MD		
	Baltimore City, MD		
	Carroll, MD		
	Harford, MD		
	Howard, MD		
	Queen Anne's, MD		
0733	Bangor, ME	0.9580	0.9916
	Penobscot, ME		
0743	Barnstable-Yarmouth, MA	1.3626	1.0725
	Barnstable, MA		
0760	Baton Rouge, LA	0.8136	0.9627
	Ascension, LA		
	East Baton Rouge, LA		
	Livingston, LA		
	West Baton Rouge, LA		
0840	Beaumont-Port Arthur, TX	0.8428	0.9686
	Hardin, TX		
	Jefferson, TX		
	Orange, TX		
0860	Bellingham, WA	1.1826	1.0365
	Whatcom, WA		
0870	Benton Harbor, MI	0.8810	0.9762
	Berrien, MI		
0875	Bergen-Passaic, NJ	1.1681	1.0336
	Bergen, NJ		
	Passaic, NJ		
0880	Billings, MT	0.9365	0.9873
	Yellowstone, MT		
0920	Biloxi-Gulfport-Pascagoula, MS	0.8440	0.9688
	Hancock, MS		
	Harrison, MS		
	Jackson, MS		
0960	Binghamton, NY	0.8404	0.9681
	Broome, NY		
	Tioga, NY		
1000	Birmingham, AL	0.8775	0.9755
	Blount, AL		

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS—Continued

MSA	Urban area (constituent counties)	Full wage index [1]	1/5 wage index [2]
	Jefferson, AL		
	St. Clair, AL		
	Shelby, AL		
1010	Bismarck, ND	0.7984	0.9597
	Burleigh, ND		
	Morton, ND		
1020	Bloomington, IN	0.8842	0.9768
	Monroe, IN		
1040	Bloomington-Normal, IL	0.9038	0.9808
	McLean, IL		
1080	Boise City, ID	0.9051	0.9810
	Ada, ID		
	Canyon, ID		
1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH (NH Hospitals)	1.1349	1.0270
	Bristol, MA		
	Essex, MA		
	Middlesex, MA		
	Norfolk, MA		
	Plymouth, MA		
	Suffolk, MA		
	Worcester, MA		
	Hillsborough, NH		
	Merrimack, NH		
	Rockingham, NH		
	Strafford, NH		
1125	Boulder-Longmont, CO	0.9798	0.9960
	Boulder, CO		
1145	Brazoria, TX	0.8209	0.9642
	Brazoria, TX		
1150	Bremerton, WA	1.0758	1.0152
	Kitsap, WA		
1240	Brownsville-Harlingen-San Benito, TX	0.9004	0.9801
	Cameron, TX		
1260	Bryan-College Station, TX	0.9328	0.9866
	Brazos, TX		
1280	Buffalo-Niagara Falls, NY	0.9392	0.9878
	Erie, NY		
	Niagara, NY		
1303	Burlington, VT	0.9914	0.9983
	Chittenden, VT		
	Franklin, VT		
	Grand Isle, VT		
1310	Caguas, PR	0.4705	0.8941
	Caguas, PR		
	Cayey, PR		
	Cidra, PR		
	Gurabo, PR		
	San Lorenzo, PR		
1320	Canton-Massillon, OH	0.8904	0.9781
	Carroll, OH		
	Stark, OH		
1350	Casper, WY	0.9496	0.9899
	Natrona, WY		
1360	Cedar Rapids, IA	0.8699	0.9740
	Linn, IA		
1400	Champaign-Urbana, IL	0.9295	0.9859
	Champaign, IL		
1440	Charleston-North Charleston, SC	0.9204	0.9841
	Berkeley, SC		
	Charleston, SC		
	Dorchester, SC		
1480	Charleston, WV	0.9264	0.9853
	Kanawha, WV		
	Putnam, WV		
1520	Charlotte-Gastonia-Rock Hill, NC-SC	0.9312	0.9862
	Cabarrus, NC		
	Gaston, NC		
	Lincoln, NC		
	Mecklenburg, NC		
	Rowan, NC		
	Stanly, NC		
	Union, NC		

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS—Continued

MSA	Urban area (constituent counties)	Full wage index [1]	1/5 wage index [2]
	York, SC		
1540	Charlottesville, VA	1.0501	1.0100
	Albemarle, VA		
	Charlottesville City, VA		
	Fluvanna, VA		
	Greene, VA		
1560	Chattanooga, TN-GA	0.9333	0.9867
	Catoosa, GA		
	Dade, GA		
	Walker, GA		
	Hamilton, TN		
	Marion, TN		
1580	Cheyenne, WY	0.8288	0.9658
	Laramie, WY		
1600	Chicago, IL	1.1008	1.0202
	Cook, IL		
	DeKalb, IL		
	DuPage, IL		
	Grundy, IL		
	Kane, IL		
	Kendall, IL		
	Lake, IL		
	McHenry, IL		
	Will, IL		
1620	Chico-Paradise, CA	0.9856	0.9971
	Butte, CA		
1640	Cincinnati, OH-KY-IN	0.9444	0.9889
	Dearborn, IN		
	Ohio, IN		
	Boone, KY		
	Campbell, KY		
	Gallatin, KY		
	Grant, KY		
	Kenton, KY		
	Pendleton, KY		
	Brown, OH		
	Clermont, OH		
	Hamilton, OH		
	Warren, OH		
1660	Clarksville-Hopkinsville, TN-KY	0.8306	0.9661
	Christian, KY		
	Montgomery, TN		
1680	Cleveland-Lorain-Elyria, OH	0.9429	0.9886
	Ashtabula, OH		
	Cuyahoga, OH		
	Geauga, OH		
	Lake, OH		
	Lorain, OH		
	Medina, OH		
1720	Colorado Springs, CO	0.9745	0.9949
	El Paso, CO		
1740	Columbia, MO	0.8674	0.9735
	Boone, MO		
1760	Columbia, SC	0.9474	0.9895
	Lexington, SC		
	Richland, SC		
1800	Columbus, GA-AL	0.8382	0.9676
	Russell, AL		
	Chattahoochee, GA		
	Harris, GA		
	Muscogee, GA		
1840	Columbus, OH	0.9543	0.9909
	Delaware, OH		
	Fairfield, OH		
	Franklin, OH		
	Licking, OH		
	Madison, OH		
	Pickaway, OH		
1880	Corpus Christi, TX	0.8337	0.9667
	Nueces, TX		
	San Patricio, TX		
1890	Corvallis, OR	1.1646	1.0329

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS—Continued

MSA	Urban area (constituent counties)	Full wage index [1]	1/5 wage index [2]
	Benton, OR		
1900	Cumberland, MD-WV (WV Hospital)	0.8321	0.9664
	Allegany, MD		
	Mineral, WV		
1920	Dallas, TX	0.9855	0.9971
	Collin, TX		
	Dallas, TX		
	Denton, TX		
	Ellis, TX		
	Henderson, TX		
	Hunt, TX		
	Kaufman, TX		
	Rockwall, TX		
1950	Danville, VA	0.8613	0.9723
	Danville City, VA		
	Pittsylvania, VA		
1960	Davenport-Moline-Rock Island, IA-IL	0.8638	0.9728
	Scott, IA		
	Henry, IL		
	Rock Island, IL		
2000	Dayton-Springfield, OH	0.9151	0.9830
	Clark, OH		
	Greene, OH		
	Miami, OH		
	Montgomery, OH		
2020	Daytona Beach, FL	0.8952	0.9790
	Flagler, FL		
	Volusia, FL		
2030	Decatur, AL	0.8775	0.9755
	Lawrence, AL		
	Morgan, AL		
2040	Decatur, IL	0.7974	0.9595
	Macon, IL		
2080	Denver, CO	1.0280	1.0056
	Adams, CO		
	Arapahoe, CO		
	Denver, CO		
	Douglas, CO		
	Jefferson, CO		
2120	Des Moines, IA	0.8735	0.9747
	Dallas, IA		
	Polk, IA		
	Warren, IA		
2160	Detroit, MI	1.0413	1.0083
	Lapeer, MI		
	Macomb, MI		
	Monroe, MI		
	Oakland, MI		
	St. Clair, MI		
	Wayne, MI		
2180	Dothan, AL	0.7948	0.9590
	Dale, AL		
	Houston, AL		
2190	Dover, DE	1.0296	1.0059
	Kent, DE		
2200	Dubuque, IA	0.8519	0.9704
	Dubuque, IA		
2240	Duluth-Superior, MN-WI	1.0284	1.0057
	St. Louis, MN		
	Douglas, WI		
2281	Dutchess County, NY	1.0514	1.0103
	Dutchess, NY		
2290	Eau Claire, WI	0.8814	0.9763
	Chippewa, WI		
	Eau Claire, WI		
2320	El Paso, TX	0.9207	0.9841
	El Paso, TX		
2330	Elkhart-Goshen, IN	0.9638	0.9928
	Elkhart, IN		
2335	Elmira, NY	0.8415	0.9683
	Chemung, NY		
2340	Enid, OK	0.8357	0.9671

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS—Continued

MSA	Urban area (constituent counties)	Full wage index [1]	1/5 wage index [2]
	Garfield, OK		
2360	Erie, PA	0.8633	0.9727
	Erie, PA		
2400	Eugene-Springfield, OR	1.1471	1.0294
	Lane, OR		
2440	Evansville-Henderson, IN-KY (IN Hospitals)	0.8489	0.9698
	Posey, IN		
	Vanderburgh, IN		
	Warrick, IN		
	Henderson, KY		
2520	Fargo-Moorhead, ND-MN	0.9268	0.9854
	Clay, MN		
	Cass, ND		
2560	Fayetteville, NC	0.9027	0.9805
	Cumberland, NC		
2580	Fayetteville-Springdale-Rogers, AR	0.8445	0.9689
	Benton, AR		
	Washington, AR		
2620	Flagstaff, AZ-UT	1.0553	1.0111
	Coconino, AZ		
	Kane, UT		
2640	Flint, MI	1.0844	1.0169
	Genesee, MI		
2650	Florence, AL	0.7845	0.9569
	Colbert, AL		
	Lauderdale, AL		
2655	Florence, SC	0.8693	0.9739
	Florence, SC		
2670	Fort Collins-Loveland, CO	1.0018	1.0004
	Larimer, CO		
2680	Ft. Lauderdale, FL	1.0293	1.0059
	Broward, FL		
2700	Fort Myers-Cape Coral, FL	0.9374	0.9875
	Lee, FL		
2710	Fort Pierce-Port St. Lucie, FL	1.0214	1.0043
	Martin, FL		
	St. Lucie, FL		
2720	Fort Smith, AR-OK	0.8052	0.9610
	Crawford, AR		
	Sebastian, AR		
	Sequoyah, OK		
2750	Fort Walton Beach, FL	0.9002	0.9800
	Okaloosa, FL		
2760	Fort Wayne, IN	0.9197	0.9839
	Adams, IN		
	Allen, IN		
	De Kalb, IN		
	Huntington, IN		
	Wells, IN		
	Whitley, IN		
2800	Forth Worth-Arlington, TX	0.9357	0.9871
	Hood, TX		
	Johnson, TX		
	Parker, TX		
	Tarrant, TX		
2840	Fresno, CA	0.9856	0.9971
	Fresno, CA		
	Madera, CA		
2880	Gadsden, AL	0.8792	0.9758
	Etowah, AL		
2900	Gainesville, FL	0.9255	0.9851
	Alachua, FL		
2920	Galveston-Texas City, TX	1.0262	1.0052
	Galveston, TX		
2960	Gary, IN	0.9529	0.9906
	Lake, IN		
	Porter, IN		
2975	Glens Falls, NY	0.8336	0.9667
	Warren, NY		
	Washington, NY		
2980	Goldsboro, NC	0.8709	0.9742
	Wayne, NC		

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS—Continued

MSA	Urban area (constituent counties)	Full wage index [1]	1/5 wage index [2]
2985	Grand Forks, ND-MN	0.9069	0.9814
	Polk, MN		
	Grand Forks, ND		
2995	Grand Junction, CO	0.9529	0.9906
	Mesa, CO		
3000	Grand Rapids-Muskegon-Holland, MI	0.9933	0.9987
	Allegan, MI		
	Kent, MI		
	Muskegon, MI		
	Ottawa, MI		
3040	Great Falls, MT	0.8870	0.9774
	Cascade, MT		
3060	Greeley, CO	0.9254	0.9851
	Weld, CO		
3080	Green Bay, WI	0.9208	0.9842
	Brown, WI		
3120	Greensboro-Winston-Salem-High Point, NC	0.9537	0.9907
	Alamance, NC		
	Davidson, NC		
	Davie, NC		
	Forsyth, NC		
	Guilford, NC		
	Randolph, NC		
	Stokes, NC		
	Yadkin, NC		
3150	Greenville, NC	0.9153	0.9831
	Pitt, NC		
3160	Greenville-Spartanburg-Anderson, SC	0.9151	0.9830
	Anderson, SC		
	Cherokee, SC		
	Greenville, SC		
	Pickens, SC		
	Spartanburg, SC		
3180	Hagerstown, MD	0.8365	0.9673
	Washington, MD		
3200	Hamilton-Middletown, OH	0.9287	0.9857
	Butler, OH		
3240	Harrisburg-Lebanon-Carlisle, PA	0.9285	0.9857
	Cumberland, PA		
	Dauphin, PA		
	Lebanon, PA		
	Perry, PA		
3283	Hartford, CT	1.1504	1.0301
	Hartford, CT		
	Litchfield, CT		
	Middlesex, CT		
	Tolland, CT		
3285	Hattiesburg, MS [2]	0.7476	0.9495
	Forrest, MS		
	Lamar, MS		
3290	Hickory-Morganton-Lenoir, NC	0.9367	0.9873
	Alexander, NC		
	Burke, NC		
	Caldwell, NC		
	Catawba, NC		
3320	Honolulu, HI	1.1538	1.0308
	Honolulu, HI		
3350	Houma, LA	0.7949	0.9590
	Lafourche, LA		
	Terrebonne, LA		
3360	Houston, TX	0.9623	0.9925
	Chambers, TX		
	Fort Bend, TX		
	Harris, TX		
	Liberty, TX		
	Montgomery, TX		
	Waller, TX		
3400	Huntington-Ashland, WV-KY-OH	0.9613	0.9923
	Boyd, KY		
	Carter, KY		
	Greenup, KY		
	Lawrence, OH		

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS—Continued

MSA	Urban area (constituent counties)	Full wage index [1]	1/5 wage index [2]
	Cabell, WV		
	Wayne, WV		
3440	Huntsville, AL	0.8883	0.9777
	Limestone, AL		
	Madison, AL		
3480	Indianapolis, IN	0.9676	0.9935
	Boone, IN		
	Hamilton, IN		
	Hancock, IN		
	Hendricks, IN		
	Johnson, IN		
	Madison, IN		
	Marion, IN		
	Morgan, IN		
	Shelby, IN		
3500	Iowa City, IA	0.9824	0.9965
	Johnson, IA		
3520	Jackson, MI	0.9257	0.9851
	Jackson, MI		
3560	Jackson, MS	0.8435	0.9687
	Hinds, MS		
	Madison, MS		
	Rankin, MS		
3580	Jackson, TN	0.9013	0.9803
	Madison, TN		
	Chester, TN		
3600	Jacksonville, FL	0.9213	0.9843
	Clay, FL		
	Duval, FL		
	Nassau, FL		
	St. Johns, FL		
3605	Jacksonville, NC	0.7622	0.9524
	Onslow, NC		
3610	Jamestown, NY	0.8050	0.9610
	Chautauqua, NY		
3620	Janesville-Beloit, WI	0.9739	0.9948
	Rock, WI		
3640	Jersey City, NJ	1.1162	1.0232
	Hudson, NJ		
3660	Johnson City-Kingsport-Bristol, TN-VA	0.8617	0.9723
	Carter, TN		
	Hawkins, TN		
	Sullivan, TN		
	Unicoi, TN		
	Washington, TN		
	Bristol City, VA		
	Scott, VA		
	Washington, VA		
3680	Johnstown, PA	0.8668	0.9734
	Cambria, PA		
	Somerset, PA		
3700	Jonesboro, AR	0.8439	0.9688
	Craighead, AR		
3710	Joplin, MO	0.8729	0.9746
	Jasper, MO		
	Newton, MO		
3720	Kalamazoo-Battlecreek, MI	1.0639	1.0128
	Calhoun, MI		
	Kalamazoo, MI		
	Van Buren, MI		
3740	Kankakee, IL	0.9889	0.9978
	Kankakee, IL		
3760	Kansas City, KS-MO	0.9501	0.9900
	Johnson, KS		
	Leavenworth, KS		
	Miami, KS		
	Wyandotte, KS		
	Cass, MO		
	Clay, MO		
	Clinton, MO		
	Jackson, MO		
	Lafayette, MO		

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS—Continued

MSA	Urban area (constituent counties)	Full wage index [1]	1/5 wage index [2]
	Platte, MO		
	Ray, MO		
3800	Kenosha, WI	0.9568	0.9914
	Kenosha, WI		
3810	Killeen-Temple, TX	0.8513	0.9703
	Bell, TX		
	Coryell, TX		
3840	Knoxville, TN	0.8873	0.9775
	Anderson, TN		
	Blount, TN		
	Knox, TN		
	Loudon, TN		
	Sevier, TN		
	Union, TN		
3850	Kokomo, IN	0.9126	0.9825
	Howard, IN		
	Tipton, IN		
3870	La Crosse, WI-MN	0.9244	0.9849
	Houston, MN		
	La Crosse, WI		
3880	Lafayette, LA	0.8499	0.9700
	Acadia, LA		
	Lafayette, LA		
	St. Landry, LA		
	St. Martin, LA		
3920	Lafayette, IN	0.9121	0.9824
	Clinton, IN		
	Tippecanoe, IN		
3960	Lake Charles, LA	0.7766	0.9553
	Calcasieu, LA		
3980	Lakeland-Winter Haven, FL	0.9067	0.9813
	Polk, FL		
4000	Lancaster, PA	0.9286	0.9857
	Lancaster, PA		
4040	Lansing-East Lansing, MI	0.9639	0.9928
	Clinton, MI		
	Eaton, MI		
	Ingham, MI		
4080	Laredo, TX	0.7849	0.9570
	Webb, TX		
4100	Las Cruces, NM	0.8619	0.9724
	Dona Ana, NM		
4120	Las Vegas, NV-AZ	1.1179	1.0236
	Mohave, AZ		
	Clark, NV		
	Nye, NV		
4150	Lawrence, KS	0.8656	0.9731
	Douglas, KS		
4200	Lawton, OK	0.8682	0.9736
	Comanche, OK		
4243	Lewiston-Auburn, ME	0.9267	0.9853
	Androscoggin, ME		
4280	Lexington, KY	0.8743	0.9749
	Bourbon, KY		
	Clark, KY		
	Fayette, KY		
	Jessamine, KY		
	Madison, KY		
	Scott, KY		
	Woodford, KY		
4320	Lima, OH	0.9470	0.9894
	Allen, OH		
	Auglaize, OH		
4360	Lincoln, NE	1.0168	1.0034
	Lancaster, NE		
4400	Little Rock-North Little Rock, AR	0.8957	0.9791
	Faulkner, AR		
	Lonoke, AR		
	Pulaski, AR		
	Saline, AR		
4420	Longview-Marshall, TX	0.8571	0.9714
	Gregg, TX		

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS—Continued

MSA	Urban area (constituent counties)	Full wage index [1]	1/5 wage index [2]
	Harrison, TX		
	Upshur, TX		
4480	Los Angeles-Long Beach, CA	1.1946	1.0389
	Los Angeles, CA		
4520	Louisville, KY-IN [1]	0.9457	0.9891
	Clark, IN		
	Floyd, IN		
	Harrison, IN		
	Scott, IN		
	Bullitt, KY		
	Jefferson, KY		
	Oldham, KY		
4600	Lubbock, TX	0.8432	0.9686
	Lubbock, TX		
4640	Lynchburg, VA	0.9104	0.9821
	Amherst, VA		
	Bedford, VA		
	Bedford City, VA		
	Campbell, VA		
	Lynchburg City, VA		
4680	Macon, GA	0.8839	0.9768
	Bibb, GA		
	Houston, GA		
	Jones, GA		
	Peach, GA		
	Twiggs, GA		
4720	Madison, WI	1.0360	1.0072
	Dane, WI		
4800	Mansfield, OH	0.8708	0.9742
	Crawford, OH		
	Richland, OH		
4840	Mayaguez, PR	0.4853	0.8971
	Anasco, PR		
	Cabo Rojo, PR		
	Hormigueros, PR		
	Mayaguez, PR		
	Sabana Grande, PR		
	San German, PR		
4880	McAllen-Edinburg-Mission, TX	0.8378	0.9676
	Hidalgo, TX		
4890	Medford-Ashland, OR	1.0314	1.0063
	Jackson, OR		
4900	Melbourne-Titusville-Palm Bay, FL	0.9913	0.9983
	Brevard, FL		
4920	Memphis, TN-AR-MS	0.8962	0.9792
	Crittenden, AR		
	DeSoto, MS		
	Fayette, TN		
	Shelby, TN		
	Tipton, TN		
4940	Merced, CA	0.9721	0.9944
	Merced, CA		
5000	Miami, FL	0.9967	0.9993
	Dade, FL		
5015	Middlesex-Somerset-Hunterdon, NJ	1.1407	1.0281
	Hunterdon, NJ		
	Middlesex, NJ		
	Somerset, NJ		
5080	Milwaukee-Waukesha, WI	0.9894	0.9979
	Milwaukee, WI		
	Ozaukee, WI		
	Washington, WI		
	Waukesha, WI		
5120	Minneapolis-St. Paul, MN-WI	1.0909	1.0182
	Anoka, MN		
	Carver, MN		
	Chisago, MN		
	Dakota, MN		
	Hennepin, MN		
	Isanti, MN		
	Ramsey, MN		
	Scott, MN		

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS—Continued

MSA	Urban area (constituent counties)	Full wage index [1]	1/5 wage index [2]
	Sherburne, MN		
	Washington, MN		
	Wright, MN		
	Pierce, WI		
	St. Croix, WI		
5140	Missoula, MT	0.9364	0.9873
	Missoula, MT		
5160	Mobile, AL	0.8027	0.9605
	Baldwin, AL		
	Mobile, AL		
5170	Modesto, CA	1.0820	1.0164
	Stanislaus, CA		
5190	Monmouth-Ocean, NJ	1.0863	1.0173
	Monmouth, NJ		
	Ocean, NJ		
5200	Monroe, LA	0.8149	0.9630
	Ouachita, LA		
5240	Montgomery, AL	0.7349	0.9470
	Autauga, AL		
	Elmore, AL		
	Montgomery, AL		
5280	Muncie, IN	0.9760	0.9952
	Delaware, IN		
5330	Myrtle Beach, SC	0.8759	0.9752
	Horry, SC		
5345	Naples, FL	0.9699	0.9940
	Collier, FL		
5360	Nashville, TN	0.9690	0.9938
	Cheatham, TN		
	Davidson, TN		
	Dickson, TN		
	Robertson, TN		
	Rutherford TN		
	Sumner, TN		
	Williamson, TN		
	Wilson, TN		
5380	Nassau-Suffolk, NY	1.3461	1.0692
	Nassau, NY		
	Suffolk, NY		
5483	New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2178	1.0436
	Fairfield, CT		
	New Haven, CT		
5523	New London-Norwich, CT	1.1525	1.0305
	New London, CT		
5560	New Orleans, LA	0.8995	0.9799
	Jefferson, LA		
	Orleans, LA		
	Plaquemines, LA		
	St. Bernard, LA		
	St. Charles, LA		
	St. James, LA		
	St. John The Baptist, LA		
	St. Tammany, LA		
5600	New York, NY	1.4305	1.0861
	Bronx, NY		
	Kings, NY		
	New York, NY		
	Putnam, NY		
	Queens, NY		
	Richmond, NY		
	Rockland, NY		
	Westchester, NY		
5640	Newark, NJ	1.1618	1.0324
	Essex, NJ		
	Morris, NJ		
	Sussex, NJ		
	Union, NJ		
	Warren, NJ		
5660	Newburgh, NY-PA	1.1113	1.0223
	Orange, NY		
	Pike, PA		
5720	Norfolk-Virginia Beach-Newport News, VA-NC	0.8538	0.9708

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS—Continued

MSA	Urban area (constituent counties)	Full wage index [1]	1/5 wage index [2]
	Currituck, NC		
	Chesapeake City, VA		
	Gloucester, VA		
	Hampton City, VA		
	Isle of Wight, VA		
	James City, VA		
	Mathews, VA		
	Newport News City, VA		
	Norfolk City, VA		
	Poquoson City, VA		
	Portsmouth City, VA		
	Suffolk City, VA		
	Virginia Beach City VA		
	Williamsburg City, VA		
	York, VA		
5775	Oakland, CA	1.5332	1.1066
	Alameda, CA		
	Contra Costa, CA		
5790	Ocala, FL	0.9556	0.9911
	Marion, FL		
5800	Odessa-Midland, TX	1.0105	1.0021
	Ector, TX		
	Midland, TX		
5880	Oklahoma City, OK	0.8655	0.9731
	Canadian, OK		
	Cleveland, OK		
	Logan, OK		
	McClain, OK		
	Oklahoma, OK		
	Pottawatomie, OK		
5910	Olympia, WA	1.1362	1.0272
	Thurston, WA		
5920	Omaha, NE-IA	0.9677	0.9935
	Pottawattamie, IA		
	Cass, NE		
	Douglas, NE		
	Sarpy, NE		
	Washington, NE		
5945	Orange County, CA	1.1108	1.0222
	Orange, CA		
5960	Orlando, FL	0.9603	0.9921
	Lake, FL		
	Orange, FL		
	Osceola, FL		
	Seminole, FL		
5990	Owensboro, KY	0.8333	0.9667
	Daviess, KY		
6015	Panama City, FL	0.9061	0.9812
	Bay, FL		
6020	Parkersburg-Marietta, WV-OH	0.8128	0.9626
	Washington, OH		
	Wood, WV		
6080	Pensacola, FL	0.8331	0.9666
	Escambia, FL		
	Santa Rosa, FL		
6120	Peoria-Pekin, IL	0.8635	0.9727
	Peoria, IL		
	Tazewell, IL		
	Woodford, IL		
6160	Philadelphia, PA-NJ	1.0829	1.0166
	Burlington, NJ		
	Camden, NJ		
	Gloucester, NJ		
	Salem, NJ		
	Bucks, PA		
	Chester, PA		
	Delaware, PA		
	Montgomery, PA		
	Philadelphia, PA		
6200	Phoenix-Mesa, AZ	0.9610	0.9922
	Maricopa, AZ		
	Pinal, AZ		

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS—Continued

MSA	Urban area (constituent counties)	Full wage index [1]	1/5 wage index [2]
6240	Pine Bluff, AR	0.7925	0.9585
	Jefferson, AR		
6280	Pittsburgh, PA	0.9464	0.9893
	Allegheny, PA		
	Beaver, PA		
	Butler, PA		
	Fayette, PA		
	Washington, PA		
	Westmoreland, PA		
6323	Pittsfield, MA	1.0171	1.0034
	Berkshire, MA		
6340	Pocatello, ID	0.9448	0.9890
	Bannock, ID		
6360	Ponce, PR	0.5218	0.9044
	Guayanilla, PR		
	Juana Diaz, PR		
	Penuelas, PR		
	Ponce, PR		
	Villalba, PR		
	Yauco, PR		
6403	Portland, ME	0.9367	0.9873
	Cumberland, ME		
	Sagadahoc, ME		
	York, ME		
6440	Portland-Vancouver, OR-WA	1.1107	1.0221
	Clackamas, OR		
	Columbia, OR		
	Multnomah, OR		
	Washington, OR		
	Yamhill, OR		
	Clark, WA		
6483	Providence-Warwick-Pawtucket, RI	1.0768	1.0154
	Bristol, RI		
	Kent, RI		
	Newport, RI		
	Providence, RI		
	Washington, RI		
6520	Provo-Orem, UT	0.9836	0.9967
	Utah, UT		
6560	Pueblo, CO	0.8582	0.9716
	Pueblo, CO		
6580	Punta Gorda, FL	0.9014	0.9803
	Charlotte, FL		
6600	Racine, WI	0.9323	0.9865
	Racine, WI		
6640	Raleigh-Durham-Chapel Hill, NC	0.9774	0.9955
	Chatham, NC		
	Durham, NC		
	Franklin, NC		
	Johnston, NC		
	Orange, NC		
	Wake, NC		
6660	Rapid City, SD	0.8843	0.9769
	Pennington, SD		
6680	Reading, PA	0.9564	0.9913
	Berks, PA		
6690	Redding, CA	1.1136	1.0227
	Shasta, CA		
6720	Reno, NV	1.0369	1.0074
	Washoe, NV		
6740	Richland-Kennewick-Pasco, WA	1.0960	1.0192
	Benton, WA		
	Franklin, WA		
6760	Richmond-Petersburg, VA	0.9624	0.9925
	Charles City County, VA		
	Chesterfield, VA		
	Colonial Heights City, VA		
	Dinwiddie, VA		
	Goochland, VA		
	Hanover, VA		
	Henrico, VA		
	Hopewell City, VA		

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS—Continued

MSA	Urban area (constituent counties)	Full wage index [1]	1/5 wage index [2]
	New Kent, VA		
	Petersburg City, VA		
	Powhatan, VA		
	Prince George, VA		
	Richmond City, VA		
6780	Riverside-San Bernardino, CA	1.1104	1.0221
	Riverside, CA		
	San Bernardino, CA		
6800	Roanoke, VA	0.8286	0.9657
	Botetourt, VA		
	Roanoke, VA		
	Roanoke City, VA		
	Salem City, VA		
6820	Rochester, MN	1.1474	1.0295
	Olmsted, MN		
6840	Rochester, NY	0.9200	0.9840
	Genesee, NY		
	Livingston, NY		
	Monroe, NY		
	Ontario, NY		
	Orleans, NY		
	Wayne, NY		
6880	Rockford, IL	0.9189	0.9838
	Boone, IL		
	Ogle, IL		
	Winnebago, IL		
6895	Rocky Mount, NC	0.9109	0.9822
	Edgecombe, NC		
	Nash, NC		
6920	Sacramento, CA	1.1769	1.0354
	El Dorado, CA		
	Placer, CA		
	Sacramento, CA		
6960	Saginaw-Bay City-Midland, MI	0.9526	0.9905
	Bay, MI		
	Midland, MI		
	Saginaw, MI		
6980	St. Cloud, MN	0.9844	0.9969
	Benton, MN		
	Stearns, MN		
7000	St. Joseph, MO	0.9009	0.9802
	Andrew, MO		
	Buchanan, MO		
7040	St. Louis, MO-IL	0.8882	0.9776
	Clinton, IL		
	Jersey, IL		
	Madison, IL		
	Monroe, IL		
	St. Clair, IL		
	Franklin, MO		
	Jefferson, MO		
	Lincoln, MO		
	St. Charles, MO		
	St. Louis, MO		
	St. Louis City, MO		
	Warren, MO		
7080	Salem, OR	1.0011	1.0002
	Marion, OR		
	Polk, OR		
7120	Salinas, CA	1.4674	1.0935
	Monterey, CA		
7160	Salt Lake City-Ogden, UT	0.9861	0.9972
	Davis, UT		
	Salt Lake, UT		
	Weber, UT		
7200	San Angelo, TX	0.8193	0.9639
	Tom Green, TX		
7240	San Antonio, TX	0.8547	0.9709
	Bexar, TX		
	Comal, TX		
	Guadalupe, TX		
	Wilson, TX		

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS—Continued

MSA	Urban area (constituent counties)	Full wage index [1]	1/5 wage index [2]
7320	San Diego, CA	1.1283	1.0257
	San Diego, CA		
7360	San Francisco, CA	1.4170	1.0834
	Marin, CA		
	San Francisco, CA		
	San Mateo, CA		
7400	San Jose, CA	1.4222	1.0844
	Santa Clara, CA		
7440	San Juan-Bayamon, PR	0.4748	0.8950
	Aguas Buenas, PR		
	Barceloneta, PR		
	Bayamon, PR		
	Canovanas, PR		
	Carolina, PR		
	Catano, PR		
	Ceiba, PR		
	Comerio, PR		
	Corozal, PR		
	Dorado, PR		
	Fajardo, PR		
	Florida, PR		
	Guaynabo, PR		
	Humacao, PR		
	Juncos, PR		
	Los Piedras, PR		
	Loiza, PR		
	Luguillo, PR		
	Manati, PR		
	Morovis, PR		
	Naguabo, PR		
	Naranjito, PR		
	Rio Grande, PR		
	San Juan, PR		
	Toa Alta, PR		
	Toa Baja, PR		
	Trujillo Alto, PR		
	Vega Alta, PR		
	Vega Baja, PR		
	Yabucoa, PR		
7460	San Luis Obispo-Atascadero-Paso Robles, CA	1.0990	1.0198
	San Luis Obispo, CA		
7480	Santa Barbara-Santa Maria-Lompoc, CA	1.0794	1.0159
	Santa Barbara, CA		
7485	Santa Cruz-Watsonville, CA	1.3970	1.0794
	Santa Cruz, CA		
7490	Santa Fe, NM	1.0196	1.0039
	Los Alamos, NM		
	Santa Fe, NM		
7500	Santa Rosa, CA	1.3004	1.0601
	Sonoma, CA		
7510	Sarasota-Bradenton, FL	1.0090	1.0018
	Manatee, FL		
	Sarasota, FL		
7520	Savannah, GA	0.9974	0.9995
	Bryan, GA		
	Chatham, GA		
	Effingham, GA		
7560	Scranton—Wilkes-Barre—Hazleton, PA	0.8682	0.9736
	Columbia, PA		
	Lackawanna, PA		
	Luzerne, PA		
	Wyoming, PA		
7600	Seattle-Bellevue-Everett, WA	1.1324	1.0265
	Island, WA		
	King, WA		
	Snohomish, WA		
7610	Sharon, PA	0.7924	0.9585
	Mercer, PA		
7620	Sheboygan, WI	0.8427	0.9685
	Sheboygan, WI		
7640	Sherman-Denison, TX	0.9373	0.9875
	Grayson, TX		

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS—Continued

MSA	Urban area (constituent counties)	Full wage index [1]	1/5 wage index [2]
7680	Shreveport-Bossier City, LA	0.9014	0.9803
	Bossier, LA		
	Caddo, LA		
	Webster, LA		
7720	Sioux City, IA-NE	0.8735	0.9747
	Woodbury, IA		
	Dakota, NE		
7760	Sioux Falls, SD	0.9095	0.9819
	Lincoln, SD		
	Minnehaha, SD		
7800	South Bend, IN	0.9929	0.9986
	St. Joseph, IN		
7840	Spokane, WA	1.0653	1.0131
	Spokane, WA		
7880	Springfield, IL	0.8654	0.9731
	Menard, IL		
	Sangamon, IL		
7920	Springfield, MO	0.8555	0.9711
	Christian, MO		
	Greene, MO		
	Webster, MO		
8003	Springfield, MA	1.0806	1.0161
	Hampden, MA		
	Hampshire, MA		
8050	State College, PA	0.9122	0.9824
	Centre, PA		
8080	Steubenville-Weirton, OH-WV (WV Hospitals)	0.8637	0.9727
	Jefferson, OH		
	Brooke, WV		
	Hancock, WV		
8120	Stockton-Lodi, CA	1.0785	1.0157
	San Joaquin, CA		
8140	Sumter, SC	0.7794	0.9559
	Sumter, SC		
8160	Syracuse, NY	0.9491	0.9898
	Cayuga, NY		
	Madison, NY		
	Onondaga, NY		
	Oswego, NY		
8200	Tacoma, WA	1.1611	1.0322
	Pierce, WA		
8240	Tallahassee, FL	0.8483	0.9697
	Gadsden, FL		
	Leon, FL		
8280	Tampa-St. Petersburg-Clearwater, FL	0.8908	0.9782
	Hernando, FL		
	Hillsborough, FL		
	Pasco, FL		
	Pinellas, FL		
8320	Terre Haute, IN	0.8498	0.9700
	Clay, IN		
	Vermillion, IN		
	Vigo, IN		
8360	Texarkana, AR-Texarkana, TX	0.8319	0.9664
	Miller, AR		
	Bowie, TX		
8400	Toledo, OH	0.9738	0.9948
	Fulton, OH		
	Lucas, OH		
	Wood, OH		
8440	Topeka, KS	0.8914	0.9783
	Shawnee, KS		
8480	Trenton, NJ	1.0383	1.0077
	Mercer, NJ		
8520	Tucson, AZ	0.8967	0.9793
	Pima, AZ		
8560	Tulsa, OK	0.8924	0.9785
	Creek, OK		
	Osage, OK		
	Rogers, OK		
	Tulsa, OK		
	Wagoner, OK		

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS—Continued

MSA	Urban area (constituent counties)	Full wage index [1]	1/5 wage index [2]
8600	Tuscaloosa, AL	0.8171	0.9634
	Tuscaloosa, AL		
8640	Tyler, TX	0.9609	0.9922
	Smith, TX		
8680	Utica-Rome, NY	0.8311	0.9662
	Herkimer, NY		
	Oneida, NY		
8720	Vallejo-Fairfield-Napa, CA	1.3563	1.0713
	Napa, CA		
	Solano, CA		
8735	Ventura, CA	1.0996	1.0199
	Ventura, CA		
8750	Victoria, TX	0.8328	0.9666
	Victoria, TX		
8760	Vineland-Millville-Bridgeton, NJ	1.0441	1.0088
	Cumberland, NJ		
8780	Visalia-Tulare-Porterville, CA	0.9610	0.9922
	Tulare, CA		
8800	Waco, TX	0.8110	0.9622
	McLennan, TX		
8840	Washington, DC-MD-VA-WV	1.0962	1.0192
	District of Columbia, DC		
	Calvert, MD		
	Charles, MD		
	Frederick, MD		
	Montgomery, MD		
	Prince Georges, MD		
	Alexandria City, VA		
	Arlington, VA		
	Clarke, VA		
	Culpeper, VA		
	Fairfax, VA		
	Fairfax City, VA		
	Falls Church City, VA		
	Fauquier, VA		
	Fredericksburg City, VA		
	King George, VA		
	Loudoun, VA		
	Manassas City, VA		
	Manassas Park City, VA		
	Prince William, VA		
	Spotsylvania, VA		
	Stafford, VA		
	Warren, VA		
	Berkeley, WV		
	Jefferson, WV		
8920	Waterloo-Cedar Falls, IA	0.7980	0.9596
	Black Hawk, IA		
8940	Wausau, WI	0.9702	0.9940
	Marathon, WI		
8960	West Palm Beach-Boca Raton, FL	0.9778	0.9956
	Palm Beach, FL		
9000	Wheeling, WV-OH	0.7940	0.9588
	Belmont, OH		
	Marshall, WV		
	Ohio, WV		
9040	Wichita, KS	0.9545	0.9909
	Butler, KS		
	Harvey, KS		
	Sedgwick, KS		
9080	Wichita Falls, TX	0.7867	0.9573
	Archer, TX		
	Wichita, TX		
9140	Williamsport, PA	0.8497	0.9699
	Lycoming, PA		
9160	Wilmington-Newark, DE-MD	1.0804	1.0161
	New Castle, DE		
	Cecil, MD		
9200	Wilmington, NC	0.9408	0.9882
	New Hanover, NC		
	Brunswick, NC		
9260	Yakima, WA	1.0575	1.0115

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS—Continued

MSA	Urban area (constituent counties)	Full wage index [1]	1/5 wage index [2]
	Yakima, WA		
9270	Yolo, CA	0.9696	0.9939
	Yolo, CA		
9280	York, PA	0.9372	0.9874
	York, PA		
9320	Youngstown-Warren, OH	0.9549	0.9910
	Columbiana, OH		
	Mahoning, OH		
	Trumbull, OH		
9340	Yuba City, CA	1.0359	1.0072
	Sutter, CA		
	Yuba, CA		
9360	Yuma, AZ	0.8989	0.9798
	Yuma, AZ		

[1] Pre-reclassification wage index from FY 2002 based on fiscal year 1998 audited inpatient acute-care hospital wage data that excludes wages for services provided by teaching physicians, interns and residents, and non-physician anesthetists under Part B of the Medicare program.

[2] One-fifth of the full wage index value. For example, for a LTCH located in Chicago, Illinois (MSA 1600) in FY 2003, the 1/5 of the wage index is computed as 5.1008/5 = 1.0202. For further details, see section X.J.1. of this final rule.

TABLE 2.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR RURAL AREAS

Nonurban area	Full wage index [1]	⅕ wage index [2]
Alabama	0.7332	0.9466
Alaska	1.1853	1.0371
Arizona	0.8675	0.9735
Arkansas	0.7488	0.9498
California	0.9772	0.9954
Colorado	0.8807	0.9761
Connecticut	1.2077	1.0415
Delaware	0.9581	0.9916
Florida	0.8812	0.9762
Georgia	0.8288	0.9658
Hawaii	1.1110	1.0222
Idaho	0.8702	0.9740
Illinois	0.8049	0.9610
Indiana	0.8720	0.9744
Iowa	0.8124	0.9625
Kansas	0.7754	0.9551
Kentucky	0.7958	0.9592
Louisiana	0.7596	0.9519
Maine	0.8716	0.9743
Maryland	0.8859	0.9772
Massachusetts	1.1454	1.0291
Michigan	0.9004	0.9801
Minnesota	0.9017	0.9803
Mississippi	0.7522	0.9504
Missouri	0.7772	0.9554
Montana	0.8649	0.9730
Nebraska	0.8111	0.9622
Nevada	0.9671	0.9934
New Hampshire	0.9736	0.9947
New Jersey [3]	.....	.....
New Mexico	0.8673	0.9735
New York	0.8515	0.9703
North Carolina	0.8536	0.9707
North Dakota	0.7856	0.9571
Ohio	0.8664	0.9733
Oklahoma	0.7565	0.9513
Oregon	1.0014	1.0003
Pennsylvania	0.8587	0.9717
Puerto Rico	0.4797	0.8959
Rhode Island [3]	.....	.....
South Carolina	0.8510	0.9702
South Dakota	0.7845	0.9569
Tennessee	0.7928	0.9586
Texas	0.7705	0.9541
Utah	0.9041	0.9808
Vermont	0.9462	0.9892
Virginia	0.8236	0.9647
Washington	1.0200	1.0040
West Virginia	0.8047	0.9609
Wisconsin	0.9069	0.9814
Wyoming	0.8736	0.9747

[1] Pre-reclassification wage index from FY 2002 based on fiscal year 1998 audited inpatient acute-care hospital wage data that excludes wages for services provided by teaching physicians, interns and residents, and nonphysician anesthetists under Part B of the Medicare program.

[2] One-fifth of the full wage index value. For example, for a LTCH located in rural Arizona in FY 2003, the ⅕ of the wage index is computed as 4.8675/5 = 0.9735. For further details, see section X.J.1 of this final rule.

[3] All counties within the State are classified as urban.

TABLE 3.—LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY

LTC–DRG	Description	Relative weight	Geo-metric mean length of stay	FY 2001 LTCH cases
1	CRANIOTOMY AGE >17 W CC [5]	1.8783	46.3	8
2	CRANIOTOMY AGE >17 W/O CC [5]	1.8783	46.3	1
3	CRANIOTOMY AGE 0–17*	1.8783	46.3	0
4	SPINAL PROCEDURES [4]	1.2493	31.3	16
5	EXTRACRANIAL VASCULAR PROCEDURES [4]	1.2493	31.3	5
6	CARPAL TUNNEL RELEASE*	0.4055	16.8	0
7	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	1.7829	43.8	97
8	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC [4]	1.2493	31.3	5
9	SPINAL DISORDERS & INJURIES	1.4118	34.6	130
10	NERVOUS SYSTEM NEOPLASMS W CC [7]	0.8537	24.5	102
11	NERVOUS SYSTEM NEOPLASMS W/O CC [7]	0.8537	24.5	26
12	DEGENERATIVE NERVOUS SYSTEM DISORDERS	0.7773	27.1	1,577
13	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	0.7207	25.6	89
14	INTERCRANIAL HEMORRHAGE & STROKE W INFARCT	0.8816	26.6	1,198
15	NONSPECIFIC CVA & PRECEREBRAL OCCULUSION W/O INFARCT	0.9053	29.4	1,627
16	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	0.8864	27.0	120
17	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC [2]	0.6655	21.9	21
18	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	0.7770	24.9	133
19	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.5486	22.0	43
20	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.2331	29.3	163
21	VIRAL MENINGITIS [1]	0.4055	16.8	7
22	HYPERTENSIVE ENCEPHALOPATHY [2]	0.6655	21.9	4
23	NONTRAUMATIC STUPOR & COMA	0.9623	27.2	85
24	SEIZURE & HEADACHE AGE >17 W CC	0.8831	24.8	123
25	SEIZURE & HEADACHE AGE >17 W/O CC	0.4830	20.4	47
26	SEIZURE & HEADACHE AGE 0–17*	0.4055	16.8	0
27	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.1126	31.6	31
28	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.1507	29.0	134
29	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	0.9268	27.2	65
30	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0–17*	0.8284	23.3	0
31	CONCUSSION AGE >17 W CC [2]	0.6655	21.9	4
32	CONCUSSION AGE >17 W/O CC*	0.4055	16.8	0
33	CONCUSSION AGE 0–17*	0.4055	16.8	0
34	OTHER DISORDERS OF NERVOUS SYSTEM W CC	0.8385	25.1	394
35	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	0.6561	25.3	189
36	RETINAL PROCEDURES*	0.4055	16.8	0
37	ORBITAL PROCEDURES*	0.4055	16.8	0
38	PRIMARY IRIS PROCEDURES*	0.4055	16.8	0
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY*	0.4055	16.8	0
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17*	0.4055	16.8	0
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17*	0.4055	16.8	0
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS*	0.4055	16.8	0
43	HYPHEMA [3]	0.8284	23.3	2
44	ACUTE MAJOR EYE INFECTIONS [2]	0.6655	21.9	5
45	NEUROLOGICAL EYE DISORDERS [1]	0.4055	16.8	2
46	OTHER DISORDERS OF THE EYE AGE >17 W CC [2]	0.6655	21.9	14
47	OTHER DISORDERS OF THE EYE AGE >17 W/O CC [1]	0.4055	16.8	3
48	OTHER DISORDERS OF THE EYE AGE 0–17*	0.4055	16.8	0
49	MAJOR HEAD & NECK PROCEDURES*	1.8783	46.3	0
50	SIALOADENECTOMY*	0.6655	21.9	0
51	*	0.6655	21.9	0
52	CLEFT LIP & PALATE REPAIR*	0.6655	21.9	0
53	SINUS & MASTOID PROCEDURES AGE >17*	0.6655	21.9	0
54	SINUS & MASTOID PROCEDURES AGE 0–17*	0.6655	21.9	0
55	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES [2]	0.6655	21.9	1
56	RHINOPLASTY*	0.6655	21.9	0
57	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17*.	0.6655	21.9	0
58	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17*.	0.6655	21.9	0
59	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17*	0.6655	21.9	0
60	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17*	0.6655	21.9	0
61	MYRINGOTOMY W TUBE INSERTION AGE >17 [5]	1.8783	46.3	1
62	MYRINGOTOMY W TUBE INSERTION AGE 0–17*	0.6655	21.9	0
63	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES [5]	1.8783	46.3	1
64	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.0447	25.5	111
65	DYSEQUILIBRIUM	0.5056	19.8	25
66	EPISTAXIS [1]	0.4055	16.8	3
67	EPIGLOTTITIS [1]	0.4055	16.8	1
68	OTITIS MEDIA & URI AGE >17 W CC [3]	0.8284	23.3	14

TABLE 3.—LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Relative weight	Geo-metric mean length of stay	FY 2001 LTCH cases
69	OTITIS MEDIA & URI AGE >17 W/O CC [3]	0.8284	23.3	8
70	OTITIS MEDIA & URI AGE 0–17 *	0.4055	16.8	0
71	LARYNGOTRACHEITIS *	0.4055	16.8	0
72	NASAL TRAUMA & DEFORMITY [1]	0.4055	16.8	2
73	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	0.8097	23.7	29
74	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17 *	0.4055	16.8	0
75	MAJOR CHEST PROCEDURES [5]	1.8783	46.3	13
76	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.7674	50.6	522
77	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC [5]	1.8783	46.3	14
78	PULMONARY EMBOLISM	0.6348	20.5	96
79	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	0.8916	22.2	1,134
80	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	0.7947	22.8	123
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17 *	0.4055	16.8	0
82	RESPIRATORY NEOPLASMS	0.7976	20.9	402
83	MAJOR CHEST TRAUMA W CC	0.7384	24.8	25
84	MAJOR CHEST TRAUMA W/O CC [1]	0.4055	16.8	6
85	PLEURAL EFFUSION W CC	0.8207	23.6	163
86	PLEURAL EFFUSION W/O CC	0.6194	21.1	23
87	PULMONARY EDEMA & RESPIRATORY FAILURE	1.6597	32.3	3,875
88	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	0.7532	20.9	3,412
89	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	0.8533	23.6	2,654
90	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.7921	23.0	318
91	SIMPLE PNEUMONIA & PLEURISY AGE 0–17 *	0.8284	23.3	0
92	INTERSTITIAL LUNG DISEASE W CC	0.7251	19.1	135
93	INTERSTITIAL LUNG DISEASE W/O CC	0.5573	18.5	29
94	PNEUMOTHORAX W CC	0.7885	22.7	41
95	PNEUMOTHORAX W/O CC [1]	0.4055	16.8	7
96	BRONCHITIS & ASTHMA AGE >17 W CC	0.8173	24.2	147
97	BRONCHITIS & ASTHMA AGE >17 W/O CC	0.5940	17.9	23
98	BRONCHITIS & ASTHMA AGE 0–17 *	0.4055	16.8	0
99	RESPIRATORY SIGNS & SYMPTOMS W CC	1.1164	27.3	705
100	RESPIRATORY SIGNS & SYMPTOMS W/O CC	1.0015	25.4	77
101	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	0.9763	23.4	177
102	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.9313	24.5	28
103	HEART TRANSPLANT [6]	0.0000	0.0	0
104	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W CARDIAC CATH *.	1.8783	46.3	0
105	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W/O CARDIAC CATH *.	1.8783	46.3	0
106	CORONARY BYPASS W PTCA *	1.8783	46.3	0
107	CORONARY BYPASS W CARDIAC CATH *	1.8783	46.3	0
108	OTHER CARDIOTHORACIC PROCEDURES [2]	0.6655	21.9	1
109	CORONARY BYPASS W/O PTCA OR CARDIAC CATH *	1.8783	46.3	0
110	MAJOR CARDIOVASCULAR PROCEDURES W CC [5]	1.8783	46.3	5
111	MAJOR CARDIOVASCULAR PROCEDURES W/O CC [5]	1.8783	46.3	1
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE.	1.4103	36.9	92
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.3377	40.2	32
115	PRM CARD PACEM IMPL W AMI,HRT FAIL OR SHK,OR AICD LEAD OR GNRTR P [5].	1.8783	46.3	3
116	OTH PERM CARD PACEMAK IMPL OR PTCA W CORONARY ARTERY STENT IMPLNT [3].	0.8284	23.3	4
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT *	0.4055	16.8	0
118	CARDIAC PACEMAKER DEVICE REPLACEMENT [1]	0.4055	16.8	2
119	VEIN LIGATION & STRIPPING *	0.6655	21.9	0
120	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	1.4091	36.4	174
121	CIRCULATORY DISORDERS W AMI & MAJOR COMP, DISCHARGED ALIVE	0.7167	21.6	196
122	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP, DISCHARGED ALIVE.	0.5144	19.0	51
123	CIRCULATORY DISORDERS W AMI, EXPIRED	0.9412	20.9	36
124	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG [3].	0.8284	23.3	5
125	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG [5].	1.8783	46.3	3
126	ACUTE & SUBACUTE ENDOCARDITIS	0.7689	24.8	148
127	HEART FAILURE & SHOCK	0.7616	22.4	2,324
128	DEEP VEIN THROMBOPHLEBITIS	0.6042	20.8	29
129	CARDIAC ARREST, UNEXPLAINED	1.0534	20.9	22
130	PERIPHERAL VASCULAR DISORDERS W CC	0.7914	24.8	1,061
131	PERIPHERAL VASCULAR DISORDERS W/O CC	0.7081	23.7	178

TABLE 3.—LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Relative weight	Geo-metric mean length of stay	FY 2001 LTCH cases
132	ATHEROSCLEROSIS W CC	0.8183	21.8	645
133	ATHEROSCLEROSIS W/O CC	0.5484	18.5	126
134	HYPERTENSION	0.6985	24.0	123
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	0.7331	20.3	169
136	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	0.7075	21.0	24
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0–17*	0.6655	21.9	0
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	0.7187	23.4	295
139	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	0.6482	20.4	54
140	ANGINA PECTORIS	0.7690	20.1	52
141	SYNCOPE & COLLAPSE W CC	0.6252	23.2	101
142	SYNCOPE & COLLAPSE W/O CC	0.5452	21.5	41
143	CHEST PAIN	0.7316	22.7	41
144	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	0.7870	21.9	551
145	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.7637	25.0	66
146	RECTAL RESECTION W CC[4]	1.2493	31.3	1
147	RECTAL RESECTION W/O CC*	1.2493	31.3	0
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	2.8488	47.6	20
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC[2]	0.6655	21.9	3
150	PERITONEAL ADHESIOLYSIS W CC[1]	0.4055	16.8	1
151	PERITONEAL ADHESIOLYSIS W/O CC*	0.4055	16.8	0
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC[4]	1.2493	31.3	1
153	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC*	0.8284	23.3	0
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC[4]	1.2493	31.3	7
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC*.	0.8284	23.3	0
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0–17*	0.8284	23.3	0
157	ANAL & STOMAL PROCEDURES W CC[1]	0.4055	16.8	1
158	ANAL & STOMAL PROCEDURES W/O CC*	0.4055	16.8	0
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC[4]	1.2493	31.3	2
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC*.	0.6655	21.9	0
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC*	0.6655	21.9	0
162	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC*	0.6655	21.9	0
163	HERNIA PROCEDURES AGE 0–17*	0.6655	21.9	0
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC*	0.8284	23.3	0
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC*	0.8284	23.3	0
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC*	0.6655	21.9	0
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC*	0.6655	21.9	0
168	MOUTH PROCEDURES W CC[3]	0.8284	23.3	1
169	MOUTH PROCEDURES W/O CC*	0.6655	21.9	0
170	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	1.5543	35.0	40
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC[3]	0.8284	23.3	1
172	DIGESTIVE MALIGNANCY W CC	0.8553	24.2	335
173	DIGESTIVE MALIGNANCY W/O CC	0.5513	18.9	55
174	G.I. HEMORRHAGE W CC	0.8741	23.6	258
175	G.I. HEMORRHAGE W/O CC	0.8359	25.6	35
176	COMPLICATED PEPTIC ULCER	0.7661	24.4	37
177	UNCOMPLICATED PEPTIC ULCER W CC[3]	0.8284	23.3	14
178	UNCOMPLICATED PEPTIC ULCER W/O CC[2]	0.6655	21.9	6
179	INFLAMMATORY BOWEL DISEASE	1.0975	23.4	45
180	G.I. OBSTRUCTION W CC	0.8457	22.8	193
181	G.I. OBSTRUCTION W/O CC	0.5638	19.5	20
182	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC	0.8829	25.9	436
183	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC.	0.6913	21.5	66
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0–17*	0.6655	21.9	0
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17[3].	0.8284	23.3	20
186	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0–17*.	0.8284	23.3	0
187	DENTAL EXTRACTIONS & RESTORATIONS*	0.8284	23.3	0
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.0490	24.2	481
189	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	0.5852	17.4	48
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17*	0.6655	21.9	0
191	PANCREAS, LIVER & SHUNT PROCEDURES W CC[5]	1.8783	46.3	5
192	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC*	1.2493	31.3	0
193	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC[4].	1.2493	31.3	1
194	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC*.	0.8284	23.3	0

TABLE 3.—LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Relative weight	Geo-metric mean length of stay	FY 2001 LTCH cases
195	CHOLECYSTECTOMY W C.D.E. W CC*	0.8284	23.3	0
196	CHOLECYSTECTOMY W C.D.E. W/O CC*	0.8284	23.3	0
197	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC[5]	1.8783	46.3	2
198	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC[5]	1.8783	46.3	2
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY[3]	0.8284	23.3	1
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY[4]	1.2493	31.3	3
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES[5]	1.8783	46.3	5
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	0.5736	18.4	64
203	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	0.5897	18.2	88
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	0.9444	22.1	169
205	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	0.6825	21.5	85
206	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC[2]	0.6655	21.9	13
207	DISORDERS OF THE BILIARY TRACT W CC	0.6979	21.5	78
208	DISORDERS OF THE BILIARY TRACT W/O CC[1]	0.4055	16.8	20
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY[5].	1.8783	46.3	4
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC[4]	1.2493	31.3	12
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC*	0.8284	23.3	0
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0–17*	0.8284	23.3	0
213	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS.	1.2591	33.0	32
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE[4]	1.2493	31.3	8
217	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS.	1.3602	38.8	203
218	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W CC[3].	0.8284	23.3	4
219	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC*.	0.8284	23.3	0
220	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0–17*	0.8284	23.3	0
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC[4].	1.2493	31.3	1
224	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC[1].	0.4055	16.8	1
225	FOOT PROCEDURES[4]	1.2493	31.3	23
226	SOFT TISSUE PROCEDURES W CC[4]	1.2493	31.3	8
227	SOFT TISSUE PROCEDURES W/O CC[3]	0.8284	23.3	2
228	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC*	0.6655	21.9	0
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC[2]	0.6655	21.9	1
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR[1]	0.4055	16.8	1
231	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR[5].	1.8783	46.3	9
232	ARTHROSCOPY*	0.4055	16.8	0
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC[4]	1.2493	31.3	23
234	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC[1]	0.4055	16.8	2
235	FRACTURES OF FEMUR	0.7540	28.5	167
236	FRACTURES OF HIP & PELVIS	0.7381	27.2	1,451
237	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH[2]	0.6655	21.9	15
238	OSTEOMYELITIS	0.8275	27.5	947
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY.	0.6689	21.9	199
240	CONNECTIVE TISSUE DISORDERS W CC	0.9260	26.0	100
241	CONNECTIVE TISSUE DISORDERS W/O CC	0.5805	22.7	40
242	SEPTIC ARTHRITIS	0.7725	26.3	174
243	MEDICAL BACK PROBLEMS	0.6596	23.4	765
244	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	0.5756	20.6	337
245	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	0.4426	17.5	376
246	NON-SPECIFIC ARTHROPATHIES	0.6053	21.4	45
247	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	0.5590	20.4	324
248	TENDONITIS, MYOSITIS & BURSITIS	0.7288	23.9	277
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	0.8005	27.1	348
250	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	0.8373	31.8	120
251	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	0.6904	26.0	55
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0–17*	0.4055	16.8	0
253	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC	0.8054	28.0	225
254	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	0.6999	26.4	118
255	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0–17*	0.4055	16.8	0
256	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES.	0.8002	25.1	240
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC[2]	0.6655	21.9	3
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC*	0.6655	21.9	0

TABLE 3.—LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Relative weight	Geo-metric mean length of stay	FY 2001 LTCH cases
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC*	0.6655	21.9	0
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC*	0.6655	21.9	0
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION*.	0.4055	16.8	0
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY[1]	0.4055	16.8	1
263	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	1.5388	45.0	1,093
264	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.1645	38.8	115
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC.	1.6569	45.6	29
266	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC[3].	0.8284	23.3	5
267	PERIANAL & PILONIDAL PROCEDURES*	0.4055	16.8	0
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES[4]	1.2493	31.3	5
269	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.3915	41.7	209
270	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	1.3879	41.6	22
271	SKIN ULCERS	0.9714	31.1	4,059
272	MAJOR SKIN DISORDERS W CC	0.6846	21.0	33
273	MAJOR SKIN DISORDERS W/O CC[2]	0.6655	21.9	11
274	MALIGNANT BREAST DISORDERS W CC[7]	0.7872	22.0	50
275	MALIGNANT BREAST DISORDERS W/O CC[7]	0.7872	22.0	11
276	NON-MALIGANT BREAST DISORDERS[2]	0.6655	21.9	8
277	CELLULITIS AGE >17 W CC	0.7704	24.4	985
278	CELLULITIS AGE >17 W/O CC	0.6353	22.4	247
279	CELLULITIS AGE 0–17*	0.6655	21.9	0
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	1.0097	30.9	161
281	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	0.7363	27.4	55
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0–17*	0.6655	21.9	0
283	MINOR SKIN DISORDERS W CC	0.8574	24.8	43
284	MINOR SKIN DISORDERS W/O CC[1]	0.4055	16.8	16
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS.	1.3692	31.7	25
286	ADRENAL & PITUITARY PROCEDURES*	1.2493	31.3	0
287	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS.	1.3195	39.6	52
288	O.R. PROCEDURES FOR OBESITY[5]	1.8783	46.3	3
289	PARATHYROID PROCEDURES*	0.4055	16.8	0
290	THYROID PROCEDURES[1]	0.4055	16.8	1
291	THYROGLOSSAL PROCEDURES*	0.4055	16.8	0
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC[4]	1.2493	31.3	17
293	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC*	0.6655	21.9	0
294	DIABETES AGE >35	0.7678	25.1	400
295	DIABETES AGE 0–35[3]	0.8284	23.3	6
296	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	0.7710	24.3	648
297	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	0.6321	21.1	144
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17*	0.6655	21.9	0
299	INBORN ERRORS OF METABOLISM[3]	0.8284	23.3	12
300	ENDOCRINE DISORDERS W CC	0.8670	23.3	58
301	ENDOCRINE DISORDERS W/O CC[1]	0.4055	16.8	15
302	KIDNEY TRANSPLANT[6]	0.0000	0.0	0
303	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM[5]	1.8783	46.3	2
304	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC[4]	1.2493	31.3	10
305	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC[2]	0.6655	21.9	2
306	PROSTATECTOMY W CC[3]	0.8284	23.3	3
307	PROSTATECTOMY W/O CC[1]	0.4055	16.8	1
308	MINOR BLADDER PROCEDURES W CC[3]	0.8284	23.3	5
309	MINOR BLADDER PROCEDURES W/O CC*	0.4055	16.8	0
310	TRANSURETHRAL PROCEDURES W CC[4]	1.2493	31.3	6
311	TRANSURETHRAL PROCEDURES W/O CC[1]	0.4055	16.8	1
312	URETHRAL PROCEDURES, AGE >17 W CC[5]	1.8783	46.3	1
313	URETHRAL PROCEDURES, AGE >17 W/O CC*	0.4055	16.8	0
314	URETHRAL PROCEDURES, AGE 0–17*	0.4055	16.8	0
315	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	1.5800	39.5	221
316	RENAL FAILURE	0.9308	24.1	1,568
317	ADMIT FOR RENAL DIALYSIS[4]	1.2493	31.3	4
318	KIDNEY & URINARY TRACT NEOPLASMS W CC	0.8075	21.5	69
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC[2]	0.6655	21.9	12
320	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	0.7424	23.9	718
321	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.6123	20.4	111
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0–17*	0.6655	21.9	0
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY[2]	0.6655	21.9	11

TABLE 3.—LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Relative weight	Geo-metric mean length of stay	FY 2001 LTCH cases
324	URINARY STONES W/O CC [2]	0.6655	21.9	4
325	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	0.8123	26.7	24
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC [2]	0.6655	21.9	11
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0–17 *	0.4055	16.8	0
328	URETHRAL STRICTURE AGE >17 W CC *	0.6655	21.9	0
329	URETHRAL STRICTURE AGE >17 W/O CC [1]	0.4055	16.8	1
330	URETHRAL STRICTURE AGE 0–17 *	0.4055	16.8	0
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	0.9267	24.6	292
332	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	0.6393	20.9	47
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0–17 *	0.4055	16.8	0
334	MAJOR MALE PELVIC PROCEDURES W CC *	1.2493	31.3	0
335	MAJOR MALE PELVIC PROCEDURES W/O CC *	0.8284	23.3	0
336	TRANSURETHRAL PROSTATECTOMY W CC [3]	0.8284	23.3	2
337	TRANSURETHRAL PROSTATECTOMY W/O CC *	0.6655	21.9	0
338	TESTES PROCEDURES, FOR MALIGNANCY *	0.6655	21.9	0
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17 [1]	0.4055	16.8	1
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0–17 *	0.4055	16.8	0
341	PENIS PROCEDURES [2]	0.6655	21.9	1
342	CIRCUMCISION AGE >174 [4]	1.2493	31.3	1
343	CIRCUMCISION AGE 0–17 *	0.4055	16.8	0
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY [4].	1.2493	31.3	1
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY [3].	0.8284	23.3	2
346	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	0.7070	21.6	51
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC [2]	0.6655	21.9	10
348	BENIGN PROSTATIC HYPERTROPHY W CC [1]	0.4055	16.8	3
349	BENIGN PROSTATIC HYPERTROPHY W/O CC *	0.4055	16.8	0
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	0.6058	19.9	25
351	STERILIZATION, MALE *	0.4055	16.8	0
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES [3]	0.8284	23.3	9
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY *.	1.8783	46.3	0
354	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC *	1.2493	31.3	0
355	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC *	1.2493	31.3	0
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES *	1.2493	31.3	0
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY *	1.2493	31.3	0
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC [5]	1.8783	46.3	1
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC [1]	0.4055	16.8	2
360	VAGINA, CERVIX & VULVA PROCEDURES [1]	0.4055	16.8	2
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION *	0.6655	21.9	0
362	ENDOSCOPIC TUBAL INTERRUPTION *	0.6655	21.9	0
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY *	0.8284	23.3	0
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY *	0.6655	21.9	0
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES [5]	1.8783	46.3	2
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	0.9654	23.9	71
367	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC [3]	0.8284	23.3	19
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM [4]	1.2493	31.3	13
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS [2]	0.6655	21.9	20
370	CESAREAN SECTION W CC *	0.8284	23.3	0
371	CESAREAN SECTION W/O CC *	0.6655	21.9	0
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES *	0.6655	21.9	0
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES *	0.4055	16.8	0
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C *	0.4055	16.8	0
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C *	0.4055	16.8	0
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE *	0.4055	16.8	0
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE *	0.4055	16.8	0
378	ECTOPIC PREGNANCY *	0.6655	21.9	0
379	THREATENED ABORTION *	0.4055	16.8	0
380	ABORTION W/O D&C *	0.4055	16.8	0
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY *	0.4055	16.8	0
382	FALSE LABOR *	0.4055	16.8	0
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS *	0.4055	16.8	0
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS *	0.4055	16.8	0
385	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY *.	0.4055	16.8	0
386	EXTREME IMMATURITY *	0.6655	21.9	0
387	PREMATURITY W MAJOR PROBLEMS *	0.6655	21.9	0
388	PREMATURITY W/O MAJOR PROBLEMS *	0.4055	16.8	0
389	FULL TERM NEONATE W MAJOR PROBLEMS [4]	1.2493	31.3	1

TABLE 3.—LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Relative weight	Geo-metric mean length of stay	FY 2001 LTCH cases
390	NEONATE W OTHER SIGNIFICANT PROBLEMS*	0.6655	21.9	0
391	NORMAL NEWBORN*	0.4055	16.8	0
392	SPLENECTOMY AGE >17*	0.8284	23.3	0
393	SPLENECTOMY AGE 0–17*	0.6655	21.9	0
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS[5].	1.8783	46.3	4
395	RED BLOOD CELL DISORDERS AGE >17	0.8584	25.1	131
396	RED BLOOD CELL DISORDERS AGE 0–17*	0.4055	16.8	0
397	COAGULATION DISORDERS	0.7567	19.4	24
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	0.9008	23.4	49
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC[1]	0.4055	16.8	5
400	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE[3]	0.8284	23.3	1
401	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC[4]	1.2493	31.3	7
402	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC*	0.8284	23.3	0
403	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	0.9651	23.9	185
404	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	0.8980	19.1	23
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0–17*	0.6655	21.9	0
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC[5].	1.8783	46.3	1
407	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC*.	0.8284	23.3	0
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC[4]	1.2493	31.3	5
409	RADIOTHERAPY	0.5220	19.5	22
410	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS[1]	0.4055	16.8	11
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY*	0.4055	16.8	0
412	HISTORY OF MALIGNANCY W ENDOSCOPY*	0.4055	16.8	0
413	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC[7]	0.9061	23.7	63
414	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC[7]	0.9061	23.7	8
415	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	1.4933	38.7	262
416	SEPTICEMIA AGE >17	0.9612	25.9	1,722
417	SEPTICEMIA AGE 0–17*	0.8284	23.3	0
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	0.8771	25.8	564
419	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	0.5948	20.5	20
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC[1]	0.4055	16.8	9
421	VIRAL ILLNESS AGE >17[4]	1.2493	31.3	15
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17*	0.4055	16.8	0
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	0.8701	24.7	190
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS[5]	1.8783	46.3	11
425	ACUTE ADJUSTMENT REACTION & PSYCHOLOGICAL DYSFUNCTION	0.6177	26.0	54
426	DEPRESSIVE NEUROSES	0.5739	26.9	74
427	NEUROSES EXCEPT DEPRESSIVE[2]	0.6655	21.9	12
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL[4]	1.2493	31.3	17
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	0.5466	25.0	535
430	PSYCHOSES	0.4479	22.9	1,667
431	CHILDHOOD MENTAL DISORDERS	0.4345	22.7	27
432	OTHER MENTAL DISORDER DIAGNOSES[2]	0.6655	21.9	4
433	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.2489	13.1	10
439	SKIN GRAFTS FOR INJURIES	1.3200	42.5	28
440	WOUND DEBRIDEMENTS FOR INJURIES	1.3567	40.1	90
441	HAND PROCEDURES FOR INJURIES*	0.6655	21.9	0
442	OTHER O.R. PROCEDURES FOR INJURIES W CC	1.6442	39.7	37
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC[2]	0.6655	21.9	4
444	TRAUMATIC INJURY AGE >17 W CC	0.9614	30.7	363
445	TRAUMATIC INJURY AGE >17 W/O CC	0.8448	27.3	80
446	TRAUMATIC INJURY AGE 0–17*	0.8284	23.3	0
447	ALLERGIC REACTIONS AGE >17[2]	0.6655	21.9	4
448	ALLERGIC REACTIONS AGE 0–17*	0.4055	16.8	0
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC[3]	0.8284	23.3	16
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC[2]	0.6655	21.9	7
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0–17*	0.4055	16.8	0
452	COMPLICATIONS OF TREATMENT W CC	0.9596	25.5	356
453	COMPLICATIONS OF TREATMENT W/O CC	0.6666	23.1	52
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC[3]	0.8284	23.3	15
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC[1]	0.4055	16.8	4
461	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	1.3383	38.0	253
462	REHABILITATION	0.6469	23.5	7,016
463	SIGNS & SYMPTOMS W CC	0.7618	26.8	1,318
464	SIGNS & SYMPTOMS W/O CC	0.6234	24.3	570
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS[3]	0.8284	23.3	18
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	0.8119	23.9	160

TABLE 3.—LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Relative weight	Geo-metric mean length of stay	FY 2001 LTCH cases
467	OTHER FACTORS INFLUENCING HEALTH STATUS [2]	0.6655	21.9	7
468	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.2177	45.5	555
469	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS [6]	0.0000	0.0	0
470	UNGROUPABLE [6]	0.0000	0.0	0
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY*.	1.8783	46.3	0
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	0.8047	17.1	18
475	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	2.0906	35.5	5,224
476	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS [5]	1.8783	46.3	21
477	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	1.6791	39.7	189
478	OTHER VASCULAR PROCEDURES W CC	1.6244	37.8	45
479	OTHER VASCULAR PROCEDURES W/O CC [2]	0.6655	21.9	2
480	LIVER TRANSPLANT [6]	0.0000	0.0	0
481	BONE MARROW TRANSPLANT*	1.8783	46.3	0
482	TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES*	0.6655	21.9	0
483	TRACH W MECH VENT 96+ HRS OR PDX EXCEPT FACE,MOUTH & NECK DIAG.	3.2319	54.6	403
484	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA*	1.8783	46.3	0
485	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TR*.	1.8783	46.3	0
486	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA [3]	0.8284	23.3	3
487	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.0885	29.5	94
488	HIV W EXTENSIVE O.R. PROCEDURE [5]	1.8783	46.3	6
489	HIV W MAJOR RELATED CONDITION	0.8846	22.9	100
490	HIV W OR W/O OTHER RELATED CONDITION	0.6952	20.4	20
491	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY*.	1.8783	46.3	0
492	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS [3]	0.8284	23.3	1
493	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC [3]	0.8284	23.3	4
494	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC [1]	0.4055	16.8	1
495	LUNG TRANSPLANT [6]	0.0000	0.0	0
496	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION*	1.2493	31.3	0
497	SPINAL FUSION W CC [5]	1.8783	46.3	3
498	SPINAL FUSION W/O CC [3]	0.8284	23.3	1
499	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC [5]	1.8783	46.3	2
500	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC*	0.8284	23.3	0
501	KNEE PROCEDURES W PDX OF INFECTION W CC [5]	1.8783	46.3	3
502	KNEE PROCEDURES W PDX OF INFECTION W/O CC*	0.8284	23.3	0
503	KNEE PROCEDURES W/O PDX OF INFECTION [5]	1.8783	46.3	3
504	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT*	1.8783	46.3	0
505	EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT [4]	1.2493	31.3	6
506	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA [5].	1.8783	46.3	9
507	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA*.	0.8284	23.3	0
508	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA [3].	0.8284	23.3	20
509	FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA [3].	0.8284	23.3	10
510	NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA	1.0734	32.2	31
511	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA [3]	0.8284	23.3	8
512	SIMULTANEOUS PANCREAS/KIDNEY TRANSPLANT [6]	0.0000	0.0	0
513	PANCREAS TRANSPLANT [6]	0.0000	0.0	0
514	CARDIAC DEFIBRILATOR IMPLANT W CARDIAC CATH*	0.8284	23.3	0
515	CARDIAC DEFIBRILATOR IMPLANT W/O CARDIAC CATH [4]	1.2493	31.3	4
516	PERCUTANEOUS CARDIVASCULAR PROCEDURE W AMI*	0.8284	23.3	0
517	PERCUTANEOUS CARDIVASCULAR PROC W NON-DRUG ELUTING STENT W/O AMI [5].	1.8783	46.3	1
518	PERCUTANEOUS CARDIVASCULAR PROC W/O CORONARY ARTERY STENT OR AMI [4].	1.2493	31.3	1
519	CERVICAL SPINAL FUSION W CC [3]	0.8284	23.3	2
520	CERVICAL SPINAL FUSION W/O CC [2]	0.6655	21.9	1
521	ALCOHOL/DRUG ABUSE OR DEPENDENCE W CC	0.3755	18.6	133
522	ALCOHOL/DRUG ABUSE OR DEPENDENCE W REHABILITATION THERAPY W/O CC [1].	0.4055	16.8	22
523	ALCOHOL/DRUG ABUSE OR DEPENDENCE W/O REHABILITATION THERAPY W/O CC.	0.3860	21.2	72
524	TRANSIENT ISCHEMIA	0.6250	23.1	124
525	HEART ASSIST SYSTEM IMPLANT*	1.8783	46.3	0

TABLE 3.—LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Relative weight	Geo-metric mean length of stay	FY 2001 LTCH cases
526	PERCUTANEOUS CARVIOVASCULAR PROC W DRUG-ELUTING STENT W AMI*.	0.8284	23.3	0
527	PERCUTANEOUS CARVIOVASCULAR PROC W DRUG-ELUTING STENT W/O AMI*.	0.8284	23.3	0

*Relative weights for these LTC–DRGs were determined by assigning these cases to the appropriate low volume quintile because they had no LTCH cases in the FY 2001 MedPAR.

[1] Relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 1.

[2] Relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 2.

[3] Relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 3.

[4] Relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 4.

[5] Relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 5.

[6] Relative weights for these LTC–DRGs were assigned a value of 0.0.

[7] Relative weights for these LTC–DRGs were determined after adjusting to account for nonmonotonically (see step 5 above).

Editorial Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A—Market Basket for LTCHs

A market basket has historically been used under the Medicare program to account for price increases of the services furnished by providers. The market basket used for the LTCH prospective payment system includes both operating and capital-related costs of LTCHs because we are implementing a single payment rate for both operating and capital-related costs (section X.K.. of this final rule). Under the reasonable cost-based TEFRA reimbursement system, the excluded hospital market basket is used to update limits on payment for operating costs for LTCHs. The excluded hospital market basket is based on operating costs from 1992 cost report data and includes Medicare-participating long-term care, rehabilitation, psychiatric, cancer, and children's hospitals. Since LTCH's costs are included in the excluded hospital market basket, this index, in part, reflects the cost shares of LTCHs. However, in order to capture the total costs (operating and capital) of LTCHs, we are adding a capital component to the excluded hospital market basket for use under the LTCH prospective payment system. We refer to this index as the excluded hospital with capital market basket.

At this time, we are not implementing a separate market basket for LTCHs because, currently, we believe that we may not have sufficient LTCH data to develop an accurate market basket based only on the costs of LTCHs. Since the excluded hospital market basket is currently used under the reasonable cost-based (TEFRA) payment system for LTCHs, we believe it is appropriate to use that market basket (including a component for capital costs) for LTCHs under the LTCH prospective payment system. The same excluded hospital with capital market basket is used under the IRF prospective payment system.

In the following discussion, we describe the methodology used to determine the operating and capital portions of the market basket, and include additional analyses explaining the extent to which long-term care cost shares are reflected in the excluded hospital with capital market basket.

The operating portion of the excluded hospital with capital market basket consists of major cost categories and their respective weights. The major cost categories include wages and salaries, employee benefits, pharmaceuticals, and a residual. The weights for the major cost categories are developed from the Medicare cost reports for FY 1992. The cost report data used include those hospitals excluded from the hospital inpatient prospective payment system when the Medicare average length of stay is within 15 percent (higher or lower) of the total facility average length of stay. Using the 15-percent threshold resulted in a subset of hospitals that have a significant amount of Medicare days and costs compared to using no adjustment or using a different threshold. Limiting the sample in this way provides a more accurate reflection of the structure of costs of treating Medicare patients. We compared the average length of stay for all patients to that of Medicare beneficiaries as a test of the similarity of the practice patterns for non-Medicare patients versus Medicare patients. Our goal was to measure cost shares that were reflective of the case-mix and practice patterns associated with providing services to Medicare beneficiaries (61 FR 46196, August 30, 1996). We chose to limit the data in the database because we use facility-wide data to calculate the cost shares. Including facilities' costs that are significantly reflective of the non-Medicare case-mix would inappropriately skew the data and would not be reflective of the case-mix and practice patterns associated with Medicare patients. We accomplished our goal by limiting the reports we used to those with similar length of stays for the Medicare and total facility populations. The detailed cost categories under the residual are derived from the Asset and Expenditure Survey, 1992 Census of Service Industries, by the Bureau of the Census, Economics and Statistics Administration, U.S. Department of Commerce. This survey is used in conjunction with the 1992 Input-Output Tables published by the Bureau of Economic Analysis, U.S. Department of Commerce. A more detailed description of the development of the operating portion of this index can be found in the final rule, ''Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates,'' published in the **Federal Register** on August 29, 1997 (62 FR 45993–45997).

As previously stated, the market basket for the LTCH prospective payment system reflects both operating and capital-related costs. Capital-related costs include depreciation, interest, and other associated capital-related costs. The cost categories for the capital portion of the excluded hospital with capital market basket are developed in a similar manner as those for the capital input price index used under the acute care hospital inpatient prospective payment system for capital-related costs, which is explained in the August 30, 1996 **Federal Register** (61 FR 46196–46197). We calculated weights for capital costs using the same set of Medicare cost reports used to develop the operating share. The resulting capital weight for the FY 1992 base year is 9.080 percent.

Because capital is consumed over time, depreciation and interest costs in the current year reflect both current and previous capital purchases. We use vintage weighting to capture this effect. Vintage weighting, which is explained in the August 30, 1996 **Federal Register** (61 FR 46197–46203), is the process of weighting price changes for individual years in proportion to that year's share of total purchases still being consumed.

In order to vintage weight the capital portion of the index as described above, the average useful life of both assets and debt instruments (for example, a loan, bond, or promissory note) needs to be developed. For depreciation expenses, the useful life of fixed and movable assets is calculated from the Medicare cost reports for excluded hospitals, including LTCHs. The average useful life for fixed assets is 21 years, and the average useful life for movable assets is 13 years. For interest expenses, we use the same useful life of debt instruments used in the acute care hospital inpatient prospective payment system capital input price index. We believe that this useful life is appropriate because it reflects the average useful life of hospital issuances of commercial and municipal bonds from all hospitals, including LTCHs. The average useful life of interest expense is determined to be 22 years (61 FR 46199). After the useful life is determined, a set of weights is calculated by determining the average proportion of depreciation and interest expense incurred in any given year over the useful life. This information is developed using the Medicare cost reports. These calculations are the same as those described for the capital input price index used under the acute care hospital inpatient prospective payment system for capital-related costs discussed in the August 30, 1996 hospital inpatient prospective payment system final rule (61 FR 46196–46198). The price proxies for each of the capital cost categories are the same as those used for the capital input price index used under the acute care hospital inpatient prospective payment system for capital-related costs. The cost categories, price proxies, and base-year FY 1992 weights for the excluded hospital with capital market basket that will be used under the LTCH prospective payment system are presented in Table 1 below. The vintage weights for the index are presented in Table 2 below.

TABLE 1.—EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1992) STRUCTURE AND WEIGHTS

Cost category	Price/Wage Variable	Weights (%) Base-Year: 1992
Total		100.000
Compensation		57.935
Wages and Salaries	CMS Occupational Wage Proxy	47.417
Employee Benefits	CMS Occupational Benefit Proxy	10.519
Professional fees: Non-Medical	ECI—Compensation: Prof. & Technical	1.908
Utilities		1.524
Electricity	WPI—Commercial Electric Power	0.916

TABLE 1.—EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1992) STRUCTURE AND WEIGHTS—Continued

Cost category	Price/Wage Variable	Weights (%) Base-Year: 1992
Fuel Oil, Coal etc.	WPI—Commercial Natural Gas	0.365
Water and Sewerage	CPI–U—Water & Sewage	0.243
Professional Liability Insurance	CMS—Professional Liability Premiums	0.983
All Other Products and Services		28.571
All Other Products		22.027
Pharmaceuticals	WPI—Prescription Drugs	2.791
Food: Direct Purchase	WPI—Processed Foods	2.155
Food: Contract Service	CPI–U—Food Away from Home	0.998
Chemicals	WPI—Industrial Chemicals	3.413
Medical Instruments	WPI—Med. Inst. & Equipment	2.868
Photographic Supplies	WPI—Photo Supplies	0.364
Rubber and Plastics	WPI—Rubber & Plastic Products	4.423
Paper Products	WPI—Convert. Paper and Paperboard	1.984
Apparel	WPI—Apparel	0.809
Machinery and Equipment	WPI—Machinery & Equipment	0.193
Miscellaneous Products	WPI—Finished Goods	2.029
All Other Services		6.544
Telephone	CPI–U—Telephone Services	0.574
Postage	CPI–U—Postage	0.268
All Other: Labor	ECI—Compensation: Service Workers	4.945
All Other: Non-Labor Intensive	CPI–U—All Items (Urban)	0.757
Capital-Related Costs		9.080
Depreciation		5.611
Fixed Assets	Boeckh-Institutional Construction: 21 Year Useful Life	3.570
Movable Equipment	WPI—Machinery & Equipment: 13 Year Useful Life	2.041
Interest Costs		3.212
Non-profit	Avg. Yield Municipal Bonds: 22 Year Useful Life	2.730
For-profit	Avg. Yield AAA Bonds: 22 Year Useful Life	0.482
Other Capital-Related Costs	CPI–U—Residential Rent	0.257

*The wage and benefit proxies are a blend of 10 employment cost indices (ECI). A detailed discussion of the price proxies can be found in the August 30, 1996 and August 29, 1997 **Federal Register** final rules (61 FR 46197 and 62 FR 45993). The operating cost categories in the excluded market basket described in August 29, 1997 **Federal Register** (62 FR 45993 through 45996) had weights that added to 100.0. When we add an additional set of cost category weights (capital weight = 9.08 percent) to this original group, the sum of the weights in the new index must still add to 100.0. If capital cost category weights sum to 9.08, then operating cost category weights must add to 90.92 percent. Each weight in the excluded hospital market basket from the August 29, 1997 **Federal Register** (62 FR 45996 through 45997) was multiplied by 0.9092 to determine its weight in the excluded hospital with capital market basket.

TABLE 2.—EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1992) VINTAGE WEIGHTS

Year	Fixed assets (21-year weights)	Movable assets (13-year weights)	Interest: Capital-related (22-year weights)
1	0.0201	0.0454	0.0071
2	0.0225	0.0505	0.0082
3	0.0225	0.0562	0.0100
4	0.0285	0.0620	0.0119
5	0.0301	0.0660	0.0139
6	0.0321	0.0710	0.0161
7	0.0336	0.0764	0.0185
8	0.0353	0.0804	0.0207
9	0.0391	0.0860	0.0244
10	0.0431	0.0923	0.0291
11	0.0474	0.0987	0.0350
12	0.0513	0.1047	0.0409
13	0.0538	0.1104	0.0474
14	0.0561		0.0525
15	0.0600		0.0590
16	0.0628		0.0670
17	0.0658		0.0742
18	0.0695		0.0809
19	0.0720		0.0875
20	0.0748		0.0931
21	0.0769		0.0993
22			0.1034
Total	1.0000	1.0000	1.0000

We further analyzed the extent to which the weights in the excluded hospital with capital market basket reflect the cost weights in LTCHs, particularly since more than 50 percent of excluded hospitals are psychiatric hospitals. For this purpose, we conducted an analysis comparing the major cost weights for LTCHs to the same set of cost weights for excluded hospitals. We analyzed the variations of wages, drugs, and capital. This analysis showed that these weights differed only slightly between the different types of hospitals. When the LTCH weights were substituted into the market basket structure for sensitivity analysis, the effect was less than 0.2 percentage points in any given year. This difference is less than the 0.25 percentage point criterion that determines whether a forecast error adjustment under the acute care hospital inpatient prospective payment system is warranted. In addition, many LTCHs specialize in rehabilitation or psychiatric services. Thus, it would be anticipated that the cost shares would not differ significantly from these other types of excluded hospitals. Based on this analysis, we believe that using the excluded hospital with capital market basket for the LTCH prospective payment system provides a reasonable measure of the price changes facing LTCHs. In the March 22, 2002 proposed rule, we requested comments on any other data sources that may be available to provide detailed cost category information on LTCHs. We received no comments in response to this request.

Appendix B—Update Framework

Section 307(b) of Public Law 106–554 requires that the Secretary examine the appropriateness of certain adjustments to the LTCH prospective payment, including updates. Updates are necessary to appropriately account for changes in the prices of goods and services used by a provider in furnishing care to patients. A market basket has historically been used under the Medicare program in setting update factors for services furnished by providers. Beginning in FY 2004, the annual update to the standard Federal rate for the LTCH prospective payment system

(described in section X.K.2. of this final rule) will be equal to the percentage change in the excluded hospital with capital market basket index described in Appendix A of this final rule. However, in the future we may propose to develop an update framework to update payments to LTCHs that will account for other appropriate factors that affect the efficient delivery of services and care provided to Medicare patients. The update framework would be proposed in accordance with the notice and comment rulemaking process. While we are not implementing a specific update framework for the LTCH prospective payment system at this time in this final rule, we are providing a conceptual basis for developing such an update framework.

A. Need for an Update Framework

Under the LTCH prospective payment system, Medicare payments to LTCHs are based on a predetermined national payment amount per discharge. Under section 123 of the BBRA and section 307(b) of the BIPA, the Secretary has broad authority to make appropriate adjustments to the LTCH payment system, including updates to the payment rates. Our goal is to develop a method for analyzing and comparing expected trends in the underlying cost per discharge to use in establishing these updates. However, as stated earlier, until an appropriate update framework is developed, future updates will be based only on the increase in the excluded hospital with capital market basket.

The market basket for the LTCH prospective payment system (the excluded hospital with capital market basket), developed by our Office of the Actuary (OACT), represents only one component in the measure of growth in LTCHs' costs per discharge. It captures only the pure price change of inputs (labor, materials, and capital) used by the hospital to produce a constant quantity and quality of care. However, other factors also contribute to the change in costs per discharge, including changes in case-mix, intensity, and productivity.

Under the acute care hospital inpatient prospective payment system, we use an update framework to account for these other factors and to make annual recommendations to the Congress concerning the magnitude of the update. We are currently examining these factors and exploring ways that they could be measured and incorporated into an update framework for the LTCH prospective payment system. We are also examining additional conceptual and data issues that must be considered when the framework is constructed and applied.

At this time, we have established a future annual update that is equal to the excluded hospital with capital market basket used under the LTCH prospective payment system described in Appendix A of this final rule. We believe an annual update based on the market basket described in this final rule will provide for a reasonable update until a more comprehensive update framework can be developed. Currently, under the TEFRA system, the excluded hospital market basket is used as the basis for updates to LTCHs' target amounts for inpatient operating costs. While our experience in developing other update frameworks, such as the acute care hospital inpatient (operating and capital) and SNF prospective payment systems, could provide us with the conceptual framework, we are not applying an update framework at this time.

In the March 22, 2002 proposed rule, we pointed out that it is important to develop successively more refined models of an update framework based on our evaluation of public comments and recommendations submitted to us on this issue. We would then further study the potential adjustments using the best available data. To actively pursue the development of an analytical framework that would support the continued appropriateness and relevance of the payment rates for services provided to beneficiaries in LTCHs, in the proposed rule, we requested comments concerning the use and feasibility of the conceptual approach outlined in section B of this Appendix. In the proposed rule, we specifically requested comments concerning which factors are appropriate and should be accounted for in the framework, and suggestions concerning potential data sources and analysis to support the model. As with the existing methodology used under the acute care hospital inpatient prospective payment system, the features of a LTCH-specific update framework would need to be based on sound policy and methodology. While we received no comments in response to this request, we continue to be interested in comments concerning the potential development of an update framework for the LTCH prospective payment system.

B. Factors Inherent in LTCH Payments Per Discharge

In order to understand the factors that determine LTCH costs per discharge, it is first necessary to understand the factors that determine LTCH payments per discharge. Payments per discharge under the LTCH prospective payment system are based on the cost and an implicit normal profit margin to the LTCH in providing an efficient level of care. We have developed a methodology to identify a mutually exclusive and exhaustive set of factors included in LTCH payments per discharge. The discussion here details a set of equations to identify these factors.

In its simplest form, the average payment per discharge to a LTCH can be separated into a cost term and a profit term as shown in equation (1):

$$\frac{\text{Payments}}{\text{Discharge}} = \frac{\text{Costs}}{\text{Discharge}} + \frac{\text{Profits}}{\text{Discharge}} \quad (1)$$

This equation can be made multiplicative by converting profit per discharge into a profit rate as shown in equation (2):

$$\frac{\text{Payments}}{\text{Discharge}} = \frac{\text{Costs}}{\text{Discharge}} * \frac{\text{Payments}}{\text{Costs}} \quad (2)$$

An output price term can be introduced into the equation by multiplying and dividing through by input prices and productivity. As shown in equation (3), the term inside the brackets represents the output price, since an output price reflects the input price and profit margin adjusted for productivity:

$$\frac{\text{Payments}}{\text{Discharge}} = \frac{\text{Costs}}{\text{Discharge}} * \left(\frac{\text{Payments}}{\text{Costs}} * \frac{\text{Input Prices}}{\text{Productivity}} \right) * \frac{\text{Productivity}}{\text{Input Prices}} \quad (3)$$

The cost per discharge term can be further separated by accounting for real case-mix. Under the LTCH prospective payment system, LTC–DRGs are used to classify patients. Based on accurate DRG classification data, average real case-mix per discharge can be incorporated, as shown in equation (4):

$$\frac{\text{Payments}}{\text{Discharge}} = \frac{\text{Costs/Discharge}}{\text{Real Case Mix/Discharge}} * \frac{\text{Real Case Mix}}{\text{Discharge}} * \left(\frac{\text{Payments}}{\text{Costs}} * \frac{\text{Input Prices}}{\text{Productivity}} \right) * \frac{\text{Productivity}}{\text{Input Prices}} \quad (4)$$

The term ''real'' is imperative here because only true case-mix should be measured, not case-mix caused by improper coding behavior. By rearranging the terms in equation (4), a set of mutually exclusive and exhaustive factors such as those shown in equation (5) can be identified:

$$\frac{\text{Payments}}{\text{Discharge}} = \left(\frac{\dfrac{\text{Costs}}{\text{Discharge}}}{\text{Input Prices} * \dfrac{\text{Real Case Mix}}{\text{Discharge}}} * \text{Productivity} \right) * \frac{\text{Real Case Mix}}{\text{Discharge}} * \frac{1}{\text{Productivity}} * \text{Input Prices} * \frac{\text{Payments}}{\text{Costs}} \qquad (5)$$

The term in brackets can be analyzed in two steps. First, excluding the productivity term results in case-mix adjusted real cost per discharge, which is input intensity per discharge. Second, multiplying input intensity by productivity results in case-mix adjusted real payment per discharge, or output intensity per discharge. The rationale behind this step is explained in detail in section C below.

The result of this exercise is that LTCH payment per discharge can be determined from the following factors:

$$\text{Payment Per Discharge} = \frac{\begin{pmatrix} \text{Case-Mix-Constant} \\ \text{Real Output Intensity} \\ \text{Per Discharge} \end{pmatrix} * \begin{pmatrix} \text{Real Case Mix} \\ \text{per Discharge} \end{pmatrix} * (\text{Input Prices}) * (\text{Profit Margins})}{\text{Productivity}} \qquad (6)$$

Thus, it holds that the change in LTCH payment per discharge is a function of the change in these factors shown above. In order to determine an annual update that most accurately reflects the underlying cost to the LTCH of efficiently providing care, the four factors related to cost must be accounted for when an update framework is developed. A brief discussion of each factor, including specific conceptual and data issues, is provided in section C below.

C. Defining Each Factor Inherent in LTCH Costs Per Discharge

Each cost factor from equation (6) in section B is discussed here in detail. Because this is a basic conceptual discussion, it is likely that more detailed issues may be relevant that are not explored here.

1. Input Prices

Input prices are the pure prices of inputs used by the LTCH in providing services. When we refer to inputs, we are referring to costs, which have both a price and a quantity component. The price is an input price, and the quantity component reflects real inputs or real costs. Similarly, when we refer to outputs, we are referring to payments, which also have both a price and a quantity component. The price component is the transaction output price, and the quantity component is the real output or real payment. The real inputs include labor, capital, and other materials, such as drugs. By definition, an input price reflects prices that LTCHs encounter in purchasing these inputs, whereas an output price reflects the prices that buyers encounter in purchasing LTCH services. We currently measure input prices using the excluded hospital with capital market basket. While not specific to LTCHs, we believe this index adequately reflects the input prices faced by LTCHs.

2. Productivity

Productivity measures the efficiency of the LTCH in producing outputs. It is the amount of real outputs, or real payments, that can be produced from a given amount of real inputs or real costs. For LTCHs, these inputs are in the form of both labor and capital; thus, they represent multifactor productivity, as not just labor productivity is reflected. The following set of equations shows how multifactor productivity can be measured in terms of available data, such as payments, costs, and input prices:

$$\text{Productivity} = \frac{\text{Real Payments}}{\text{Real Costs}} = \frac{(\text{Payments/Output Price})}{(\text{Costs/Input Price})} = \frac{\text{Payments}}{\text{Costs}} * \frac{\text{Input Price}}{\text{Output Price}}$$

Rearranging the terms, this multifactor productivity equation was used as the basis for incorporating an output price term in equation (3) above. This equation is the basis for understanding the relationship between input prices, output prices, profit margins, and productivity.

Equation (6) shows that productivity is divided through the equation, offsetting other factors. The theory behind this offset is that if an efficient LTCH in a competitive market can produce more output with the same amount of inputs, the full increase in input costs does not have to be passed on by the provider to maintain a normal profit margin.

3. Real Case Mix Per Discharge

Real case mix per discharge is the average overall mix of care provided by the LTCH, as measured using the LTC–DRG classification system. Over time, a measure of real case mix will change as care is given in more or less complex LTC–DRGs. Changes in the level of care within a LTC–DRG classification group would not be reflected in a case-mix measure based on LTC–DRGs, but instead should be captured in the intensity factor of equation (6). The important distinction here is the difference between real and nominal case mix. Under the LTCH prospective payment system, LTCHs will submit claims using the LTC–DRG classification system. The case-mix reflected by the claims is considered ''nominal''. However, the reported classification can reflect the true level of care provided or improper coding behavior. An example of improper coding behavior would be the upcoding, or case-mix ''creep,'' that took place when the acute care hospital inpatient prospective payment system was implemented. (For further details, see ProPAC's March 1, 1994 Report and Recommendations to Congress (pp. 73–74).) Any change in case-mix that is not associated with the actual level of care or a true change in the level of care provided must be excluded in order to determine real case-mix.

4. Case-Mix Constant Real Output Intensity Per Discharge

Intensity is the true underlying nature of the product or service and can take the form of output or input intensity, or both. In the case of LTCHs, output intensity per discharge is associated with real payment per discharge, while input intensity per discharge is associated with real cost per discharge. For example, input intensity would be associated with a nurse's hours when providing treatment, whereas output intensity would be associated with the type and number of treatments a nurse provides. The underlying nature of LTCH services is determined by such factors as technological capabilities, increased utilization of inputs (such as labor or drugs), site of care, and practice patterns. Because these factors can be difficult to measure, intensity per discharge is usually calculated as a residual after the other factors from equation (6) have been accounted for.

Accounting for output intensity associated with an efficient LTCH can be more accurately analyzed using a LTCH's costs rather than its payments. This analysis would also provide an alternative to developing or using a transaction output price index. The following series of equations shows how to use the definition of an output price as defined earlier to convert the equation for output intensity per discharge to reflect costs instead of payments, as used in equation (6):

$$\text{Case-Mix-Constant Real Output Intensity per Discharge}$$
$$= \frac{[\text{Payments/Discharge}]}{\text{Output Prices} * \text{Real Case Mix/Discharge}}$$
$$= \frac{[\text{Payments/Discharge}]}{\left(\frac{\text{Payments}}{\text{Costs}} * \frac{\text{Input Prices}}{\text{Productivity}}\right) * \text{Real Case Mix/Discharge}}$$
$$= \frac{[\text{Payments/Discharge}] * \text{Costs}}{\text{Payments} * \frac{\text{Input Prices}}{\text{Productivity}} * \text{Real Case Mix/Discharge}}$$
$$= \frac{\text{Payments} * [\text{Costs/Discharge}]}{\text{Payments} * \frac{\text{Input Prices}}{\text{Productivity}} * \text{Real Case Mix/Discharge}}$$
$$= \frac{[\text{Costs/Discharge}]}{\frac{\text{Input Prices}}{\text{Productivity}} * \text{Real Case Mix/Discharge}}$$
$$= \frac{[\text{Costs/Discharge}]}{\text{Input Prices} * \text{Real Case Mix/Discharge}} * \text{Productivity}$$

The last equation is identical to the term in brackets in equation (5), case-mix constant real input intensity per discharge multiplied by productivity. Thus, output intensity per discharge can be defined in such a way that cost data from the LTCH are utilized. This equation can be broken down even further to account for different types of input intensity per discharge. We discuss this matter more fully in section D below.

D. Applying the Factors that Affect LTCH Costs Per Discharge in an Update Framework

As discussed earlier, payments per discharge under the LTCH prospective payment system must be updated each year. Under this final rule, updates will be equal to the percent change in the excluded hospital with capital market basket beginning in FY 2004. The development of an update framework with a sound conceptual basis provides the capability to understand the underlying trends in LTCH costs per discharge for an efficient provider.

Earlier, factors inherent in LTCH costs per discharge were identified. Changes in these factors determine the change in LTCH costs per discharge and fitting these factors into an appropriate framework would allow us to accurately reflect changes in the underlying costs for efficient LTCHs. Accounting for each of these factors from equation (6) under the LTCH prospective payment system is discussed below:

- Change in case-mix constant real output intensity per discharge would be accounted for in the update framework, reflecting the factors that affect not only case-mix constant real input intensity per discharge, but also productivity, which is determined separately. Factors that can cause changes in case-mix constant real input intensity per discharge include, but are not limited to, changes in site of service, changes in within-LTC–DRG case-mix, changes in practice patterns, changes in the use of inputs, and changes in technology available.
- As discussed earlier, changes in nominal case-mix are automatically included in the payment to the LTCH. Therefore, the update framework should include an adjustment to convert changes in nominal case-mix per discharge to changes in real case-mix per discharge, if they are different.
- Change in multifactor productivity would be accounted for in the update framework. The availability of historical data on input prices, payments, and costs are useful in the analysis of this factor.
- Changes in input prices for labor, material, and capital would be accounted for in the update framework using an input price index, or market basket. To assist in updating payments for LTCH services, our Office of the Actuary currently has developed such an index; this is the excluded hospital with capital market basket.
- In an update framework, a forecast error adjustment would be included to reflect that the updates are set prospectively and a forecast error for a given year should not be perpetuated in payments for future years. In the case of the acute care hospital inpatient prospective payment system, this prospective adjustment is made on a 2-year lag and only if the error exceeds a defined threshold (0.25 percentage points).

E. Current Acute Care Hospital Inpatient Prospective Payment System and Illustrative LTCH Prospective Payment System Update Frameworks

Table I below shows the payment update framework for the current acute care hospital inpatient prospective payment system and an illustrative update framework for the LTCH prospective payment system. Some of the factors in the acute care hospital inpatient prospective payment system framework are computed using Medicare cost report data, while others are determined based on policy considerations. The details of calculating each factor for the acute care hospital inpatient prospective payment system framework can be found in the May 9, 2002 proposed rule (67 FR 31686) that set forth proposed updates to the payment rates used under the acute care hospital inpatient prospective payment system for FY 2003. This design for a LTCH update framework is for illustrative purposes only, as much more work needs to be done to determine the appropriate level of detail for each factor. The numbers provided for the hospital update are only intended to serve as examples of prior updates recommended for the acute care hospital inpatient prospective payment system.

The appropriateness of this framework for updating inpatient hospital payments was discussed in the Health Care Financing Review, Winter 1992, in an article entitled, ''Are PPS Payments Adequate? Issues for Updating and Assessing Rates.'' A similar framework would be useful for analyzing updates to LTCH payments.

TABLE I.—CURRENT CMS ACUTE CARE HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEM AND ILLUSTRATIVE LTCH PROSPECTIVE PAYMENT SYSTEM UPDATE FRAMEWORKS

CMS Hospital Inpatient Prospective Payment System Update (Percent change in)	FY 2003 Calculated Hospital Update (Percent change)	Illustrative LTCH Prospective Payment System Update (Percent change in)
CMS Prospective Payment System Hospital Market Basket..	3.5	CMS Excluded Hospital with Capital Market Basket.
Forecast Error	0.7	Forecast Error.
Productivity	−0.9 to −0.7	Productivity.
Output Intensity:	1.0	Output Intensity:
Science and Technology		Science and Technology.
Practice Patterns		Real Within-DRG Change.
Real Within-DRG Change		Utilization of Inputs.
Site of Service		Site of Service.
Case-mix Adjustment Factors:		Case-mix. Adjustment Factors:
Projected Case-Mix	1.0	Nominal Across-DRG Case-Mix.
Real Across-DRG Change	−1.0	Real Across-DRG Change.
Total Cost Per Discharge	4.3 to 4.5	Total Cost Per Discharge.
Other Policy Factors:		Other Policy Factors:
Reclassification and Recalibration	−0.3	None.
Total Calculated Update	4.0 to 4.2	Total Calculated Update.

Table data derived from the May 9, 2002 Federal Register, Medicare Program; Changes to the Hospital Inpatient Prospective Payment System and Fiscal Year 2003 Rates; Proposed Rule (67 FR 31686–31688).

F. Additional Conceptual and Data Issues

Additional conceptual issues specific to the LTCH prospective payment system include the relevance of a site-of-service substitution adjustment, the necessity of an adjustment for LTC–DRG reclassification, the handling of one-time factors, and consistency with other types of hospital updates since LTCHs are similar in structure to these other types of hospitals.

Under the acute care hospital inpatient prospective payment system, a site-of-service substitution factor (captured as part of intensity) was necessary because of the incentive to shift care from inpatient hospital to other settings such as hospital outpatient departments, SNFs, or HHAs. For the LTCH prospective payment system, it is not clear without additional research whether there is an incentive to shift care either into or out of the LTCH because of the changes in behavior created by the different Medicare payment systems.

A reclassification and recalibration adjustment under the acute care hospital inpatient prospective payment system is necessary to account for changes in the case-mix or the types of patients treated by hospitals resulting from the annual reclassification and recalibration of the DRGs. This adjustment for case-mix is applied to the current fiscal year update, but reflects the effect of revisions in the fiscal year that is 2 years before that fiscal year. Whether a LTC–DRG reclassification adjustment would be necessary in the update framework would depend on the data availability and the likelihood of revisions to LTC–DRG classifications on a periodic basis.

There is also a question about how to handle one-time factors (an example of these could be those increased costs of converting computer systems to Year 2000 compliance). An update framework might be an appropriate mechanism to account for these items, but because of uncertainty surrounding their impact on costs, determining an appropriate adjustment amount may be difficult.

LTCHs are heterogeneous and are designated as a separate payment category only because their patients have longer average lengths of stay. This raises the question of whether certain factors in an update framework for LTCHs should be consistent with the factors in an update framework for other types of hospitals since they face similar cost pressures. Additional research in this area would need to be conducted to determine the reasonableness of having consistent updates.

The purpose of this conceptual discussion is not to determine how the identified factors of the update framework would be measured. We recognize that there are significant measurement issues in accurately determining the factors that would account for growth in costs per discharge for efficiently providing care. This is driven, in part, by the shift from a cost-based payment system with an upper payment limit to a prospective payment system. Significant research and data collection will be necessary to accurately measure these factors over the historical period. One example of this would be to measure the distinction between real and nominal case-mix change. However, many of these same concerns were also encountered and successfully addressed in the hospital inpatient prospective payment system update framework.

The discussion here provides the conceptual basis for developing an update framework for the LTCH prospective payment system that reflects changes in the underlying costs of efficiently providing services. It is important to note that the framework would not handle distribution issues such as geographic wage variations. Due to some variations in technical methodologies for measuring the factors of an update framework, and because of some of the data concerns mentioned earlier, implementing an update framework for the LTCH prospective payment system would involve making significant policy decisions on issues similar to those made for the hospital inpatient prospective payment system update framework.

In the March 22, 2002 proposed rule, we invited comments on the type of data sources to use, what other factors (if any) we should consider in an update framework, and any additional comments concerning the issues discussed in the proposed rule regarding the update framework. We receive no comments in response to this request. However, we continue to be interested in any comments regarding the development of an update framework for the LTCH prospective payment system.

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August 30, 2002

Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

Medicare Program; Hospice Wage Index Fiscal Year 2003; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1211–N]

RIN 0938–AL41

Medicare Program; Hospice Wage Index Fiscal Year 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the annual update to the hospice wage index as required by statute. This update is effective October 1, 2002 through September 30, 2003. The wage index is used to reflect local differences in wage levels. The hospice wage index methodology and values are based on recommendations of a negotiated rulemaking advisory committee and were originally published in the **Federal Register** on August 8, 1997.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Lynn Riley, (410) 786–1286.

SUPPLEMENTARY INFORMATION

I. Background

A. Statute and Regulations

Hospice care is an approach to treatment that recognizes that the impending death of an individual warrants a change in the focus from curative care to palliative care (relief of pain and other uncomfortable symptoms). The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, social, psychological, emotional, and spiritual services through use of a broad spectrum of professional and other caregivers, with the goal of making the individual as physically and emotionally comfortable as possible. Counseling and inpatient respite services are available to the family of the hospice patient. Hospice programs consider both the patient and the family as a unit of care.

Section 1861(dd) of the Social Security Act (the Act) provides for coverage of hospice care for terminally ill Medicare beneficiaries who elect to receive care from a participating hospice. The statutory authority for payment to hospices participating in the Medicare program is contained in section 1814(i) of the Act.

Our existing regulations under 42 CFR part 418 establish eligibility requirements and payment standards and procedures, define covered services, and delineate the conditions a hospice must meet to be approved for participation in the Medicare program. Subpart G of part 418 provides for payment to hospices based on one of four prospectively determined rates for each day in which a qualified Medicare beneficiary is under the care of a hospice. The four rate categories are routine home care, continuous home care, inpatient respite care, and general inpatient care. Payment rates are established for each category.

The regulations at § 418.306(c), which require the rates to be adjusted by a wage index, were revised in the August 8, 1997 final rule published in the **Federal Register** (62 FR 42860). This rule implemented a new methodology for calculating the hospice wage index based on the recommendations of a negotiated rulemaking committee. The committee reached consensus on the methodology. We included the resulting committee statement, describing that consensus, as an appendix to the August 8, 1997 final rule (62 FR 42883). The provisions of the final hospice wage index rule are as follows:

- The revised hospice wage index will be calculated using the most current available hospital wage data.
- The revised hospice wage index was phased in over a 3-year transition period. For the first year of the transition period, October 1, 1997 through September 30, 1998, a blended index was calculated by adding two-thirds of the 1983 index value for an area to one-third of the revised wage index value for that area. During the second year of the transition period, October 1, 1998 through September 30, 1999, the calculation was similar, except that the blend was one-third of the 1983 index value and two-thirds of the revised wage index value for that area. We fully implemented the revised wage index during the third transition period, October 1, 1999 through September 30, 2000.
- All hospice wage index values of 0.8 or greater are subject to a budget-neutrality adjustment to ensure that we do not pay more in the aggregate than we would have paid under the original 1983 wage index. The budget-neutrality adjustment is calculated by multiplying the hospice wage index for a given area by the budget-neutrality adjustment factor. The budget-neutrality adjustment is to be applied annually, both during and after the transition period.
- All hospice wage index values below 0.8 receive the greater of the following adjustments: the wage index floor, a 15-percent increase, subject to a maximum wage index value of 0.8; or the budget-neutrality adjustment.
- The wage index is to be updated annually, in the **Federal Register**, based on the most current available hospital wage data. These data will include any changes to the definitions of Metropolitan Statistical Areas (MSA).

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) amended section 1814(i)(1)(C)(ii) of the Act to establish updates to hospice rates for fiscal years (FYs) 1998 through 2002. Hospice rates were to be updated by a factor equal to the market basket index, minus 1 percentage point. However, section 131(a) of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) changed the payment rates for FYs 2001 and 2002 by increasing the FY 2001 rate by 0.5 percent and the FY 2002 rate by 0.75 percent. Section 131(b) of the BBRA states that any additional payments made under section 131(a) of the BBRA shall not be included in updating the hospice rates after those 2 years.

Section 321(a) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) amended section 1814(i)(1)(C)(ii)(VI) of the Act by increasing Medicare hospice rates for FY 2001 by 5 percentage points. This amendment was applicable to hospice care furnished on or after April 1, 2001. Section 321(b) of the BIPA further stipulated that the 5-percent increase in Medicare hospice rates during the period beginning on April 1, 2001 through September 30, 2001 were to be treated as the payment rates in effect during FY 2001. This means that the 5-percent increase was made to the base that is updated annually according to a statutorily dictated percentage of the market basket update, as provided in section 1814(i) of the Act. The new Medicare rates for this time period were announced through HCFA Program Memorandum (PM) A–01–04 on January 16, 2001.

Also, section 321(d) of the BIPA specified that the Secretary of Health and Human Services use 1.0043 as the hospice wage index value for the Wichita, Kansas MSA in calculating payments for a hospice program providing hospice care in this MSA during FY 2000.

Payment rates for FY 2003 will be updated according to section 1814(i) of the Act. The FY 2003 rates will be the full market basket percentage increase for the FY. This rate update will be implemented through a separate PM and is not part of this notice.

B. Update to the Hospice Wage Index

This annual update is effective October 1, 2002 through September 30, 2003. In accordance with the agreement we signed with other members of the Hospice Wage Index Negotiated Rulemaking Committee, we are using the most current hospital data available to us, including any changes to the definitions of MSAs. The FY 2002 hospital wage index was the most current hospital wage data available when the FY 2003 wage index values were calculated. We used the pre-reclassified and pre-floor hospital area wage index data.

All wage index values are adjusted by a budget-neutrality factor of 1.063422 and are subject to the wage index floor adjustment, if applicable. We have completed all of the calculations described above and have included them in the wage index values reflected in both Tables A and B below. A detailed description of the method used to compute the hospice wage index is contained in both the September 4, 1996 proposed rule published in the **Federal Register** (61 FR 46579) and the August 8, 1997 final rule published in the **Federal Register** (62 FR 42860).

1. Metropolitan Statistical Areas

As explained in the September 4, 1996 hospice wage index proposed rule, each hospice's labor market area would be established by the MSA definitions issued by the Office of Management and Budget (OMB) on December 28, 1992 based on the 1990 census, and updated by OMB based on the decennial census. Any changes to the MSA definitions would be effective annually and announced in the final rule updating the hospice wage index.

2. MSA Wage Index Values Lower Than Rural Values

As explained above, any area not included in an MSA is considered to be nonurban and receives the statewide rural rate. We are aware that in the past, a number of MSAs have had wage index values that were lower than their rural statewide value. This difference is due to variations in local wage data as compared to national wage data. The hospice wage index is computed by dividing the hourly wage rate for an MSA or nonurban area by a national hourly wage rate. Nonurban areas could receive a higher wage index value than urban areas in the same State if the hourly wage rate in the nonurban area increased at a greater rate.

C. Tables

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
0040	Abilene, TX	0.8470
	Taylor, TX	
0060	Aguadilla, PR	0.5385
	Aguada, PR	
	Aguadilla, PR	
	Moca, PR	
0080	Akron, OH	1.0502
	Portage, OH	
	Summit, OH	
0120	Albany, GA	1.1315
	Dougherty, GA	
	Lee, GA	
0160	Albany-Schenectady-Troy, NY	0.9039
	Albany, NY	
	Montgomery, NY	
	Rensselaer, NY	
	Saratoga, NY	
	Schenectady, NY	
	Schoharie, NY	
0200	Albuquerque, NM	1.0378
	Bernalillo, NM	
	Sandoval, NM	
	Valencia, NM	
0220	Alexandria, LA	0.8538
	Rapides, LA	
0240	Allentown-Bethlehem-Easton, PA	1.0716
	Carbon, PA	
	Lehigh, PA	
	Northampton, PA	
0280	Altoona, PA	0.9705
	Blair, PA	
0320	Amarillo, TX	0.9263
	Potter, TX	
	Randall, TX	
0380	Anchorage, AK	1.3367
	Anchorage, AK	
0440	Ann Arbor, MI	1.1802
	Lenawee, MI	
	Livingston, MI	
	Washtenaw, MI	
0450	Anniston, AL	0.8801
	Calhoun, AL	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
0460	Appleton-Oshkosh-Neenah, WI	0.9827
	Calumet, WI	
	Outagamie, WI	
	Winnebago, WI	
0470	Arecibo, PR	0.8507
	Arecibo, PR	
	Camuy, PR	
	Hatillo, PR	
0480	Asheville, NC	0.9783
	Buncombe, NC	
	Madison, NC	
0500	Athens, GA	1.0466
	Clarke, GA	
	Madison, GA	
	Oconee, GA	
0520	Atlanta, GA	1.0696
	Barrow, GA	
	Bartow, GA	
	Carroll, GA	
	Cherokee, GA	
	Clayton, GA	
	Cobb, GA	
	Coweta, GA	
	DeKalb, GA	
	Douglas, GA	
	Fayette, GA	
	Forsyth, GA	
	Fulton, GA	
	Gwinnett, GA	
	Henry, GA	
	Newton, GA	
	Paulding, GA	
	Pickens, GA	
	Rockdale, GA	
	Spalding, GA	
	Walton, GA	
0560	Atlantic-Cape May, NJ	1.2009
	Atlantic, NJ	
	Cape May, NJ	
0580	Auburn-Opelika, AL	0.8752
	Lee, AL	
0600	Augusta-Aiken, GA–SC	1.0602
	Columbia, GA	
	McDuffie, GA	
	Richmond, GA	
	Aiken, SC	
	Edgefield, SC	
0640	Austin-San Marcos, TX	1.0241
	Bastrop, TX	
	Caldwell, TX	
	Hays, TX	
	Travis, TX	
	Williamson, TX	
0680	Bakersfield, CA	1.0123
	Kern, CA	
0720	Baltimore, MD	1.0481
	Anne Arundel, MD	
	Baltimore, MD	
	Baltimore City, MD	
	Carroll, MD	
	Harford, MD	
	Howard, MD	
	Queen Anne's, MD	
0733	Bangor, ME	1.0201
	Penobscot, ME	
0743	Barnstable-Yarmouth, MA	1.4490
	Barnstable, MA	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
0760	Baton Rouge, LA	0.8666
	Ascension, LA	
	East Baton Rouge, LA	
	Livingston, LA	
	West Baton Rouge, LA	
0840	Beaumont-Port Arthur, TX	0.8977
	Hardin, TX	
	Jefferson, TX	
	Orange, TX	
0860	Bellingham, WA	1.2576
	Whatcom, WA	
0870	Benton Harbor, MI	0.9451
	Berrien, MI	
0875	Bergen-Passaic, NJ	1.2430
	Bergen, NJ	
	Passaic, NJ	
0880	Billings, MT	0.9945
	Yellowstone, MT	
0920	Biloxi-Gulfport-Pascagoula, MS	0.8975
	Hancock, MS	
	Harrison, MS	
	Jackson, MS	
0960	Binghamton, NY	0.8982
	Broome, NY	
	Tioga, NY	
1000	Birmingham, AL	0.9367
	Blount, AL	
	Jefferson, AL	
	St. Clair, AL	
	Shelby, AL	
1010	Bismarck, ND	0.8490
	Burleigh, ND	
	Morton, ND	
1020	Bloomington, IN	0.9403
	Monroe, IN	
1040	Bloomington-Normal, IL	0.9611
	McLean, IL	
1080	Boise City, ID	0.9624
	Ada, ID	
	Canyon, ID	
1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.2105
	Bristol, MA	
	Essex, MA	
	Middlesex, MA	
	Norfolk, MA	
	Plymouth, MA	
	Suffolk, MA	
	Worcester, MA	
	Hillsborough, NH	
	Merrimack, NH	
	Rockingham, NH	
	Strafford, NH	
1125	Boulder-Longmont, CO	1.0420
	Boulder, CO	
1145	Brazoria, TX	0.8730
	Brazoria, TX	
1150	Bremerton, WA	1.1440
	Kitsap, WA	
1240	Brownsville-Harlingen-San Benito, TX	0.9584
	Cameron, TX	
1260	Bryan-College Station, TX	0.9920
	Brazos, TX	
1280	Buffalo-Niagara Falls, NY	1.0059
	Erie, NY	
	Niagara, NY	
1303	Burlington, VT	1.0510
	Chittenden, VT	
	Franklin, VT	
	Grand Isle, VT	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
1310	Caguas, PR	0.5404
	Caguas, PR	
	Cayey, PR	
	Cidra, PR	
	Gurabo, PR	
	San Lorenzo, PR	
1320	Canton-Massillon, OH	0.9524
	Carroll, OH	
	Stark, OH	
1350	Casper, WY	1.0098
	Natrona, WY	
1360	Cedar Rapids, IA	0.9251
	Linn, IA	
1400	Champaign-Urbana, IL	0.9896
	Champaign, IL	
1440	Charleston-North Charleston, SC	0.9790
	Berkeley, SC	
	Charleston, SC	
	Dorchester, SC	
1480	Charleston, WV	0.9852
	Kanawha, WV	
	Putnam, WV	
1520	Charlotte-Gastonia-Rock Hill, NC–SC	0.9928
	Cabarrus, NC	
	Gaston, NC	
	Lincoln, NC	
	Mecklenburg, NC	
	Rowan, NC	
	Stanly, NC	
	Union, NC	
	York, SC	
1540	Charlottesville, VA	1.1236
	Albermale, VA	
	Charlottesville City, VA	
	Fluvanna, VA	
	Greene, VA	
1560	Chattanooga, TN–GA	0.9963
	Catoosa, GA	
	Dade, GA	
	Walker, GA	
	Hamilton, TN	
	Marion, TN	
1580	Cheyenne, WY	0.8814
	Laramie, WY	
1600	Chicago, IL	1.1747
	Cook, IL	
	DeKalb, IL	
	Du Page, IL	
	Grundy, IL	
	Kane, IL	
	Kendall, IL	
	Lake, IL	
	McHenry, IL	
	Will, IL	
1620	Chico-Paradise, CA	1.0481
	Butte, CA	
1640	Cincinnati, OH–KY–IN	1.0074
	Brown, OH	
	Clermont, OH	
	Hamilton, OH	
	Warren, OH	
	Boone, KY	
	Campbell, KY	
	Gallatin, KY	
	Grant, KY	
	Kenton, KY	
	Pendleton, KY	
	Dearborn, IN	
	Ohio, IN	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
1660	Clarksville-Hopkinsville, TN–KY	0.8866
	Christian, KY	
	Montgomery, TN	
1680	Cleveland-Lorain-Elyria, OH	1.0057
	Ashtabula, OH	
	Cuyahoga, OH	
	Geauga, OH	
	Lake, OH	
	Lorain, OH	
	Medina, OH	
1720	Colorado Springs, CO	1.0362
	El Paso, CO	
1740	Columbia, MO	0.9237
	Boone, MO	
1760	Columbia, SC	1.0094
	Lexington, SC	
	Richland, SC	
1800	Columbus, GA–AL	0.8975
	Chattahoochee, GA	
	Harris, GA	
	Muscogee, GA	
	Russell, AL	
1840	Columbus, OH	1.0172
	Delaware, OH	
	Fairfield, OH	
	Franklin, OH	
	Licking, OH	
	Madison, OH	
	Pickaway, OH	
1880	Corpus Christi, TX	0.8870
	Nueces, TX	
	San Patricio, TX	
1890	Corvallis, Oregon	1.2385
	Benton, OR	
1900	Cumberland, MD–WV	0.8833
	Allegany, MD	
	Mineral, WV	
1920	Dallas, TX	1.0566
	Collin, TX	
	Dallas, TX	
	Denton, TX	
	Ellis, TX	
	Henderson, TX	
	Hunt, TX	
	Kaufman, TX	
	Rockwall, TX	
1950	Danville, VA	0.9159
	Danville City, VA	
	Pittsylvania, VA	
1960	Davenport-Moline-Rock Island, IA–IL	0.9186
	Scott, IA	
	Henry, IL	
	Rock Island, IL	
2000	Dayton-Springfield, OH	0.9810
	Clark, OH	
	Greene, OH	
	Miami, OH	
	Montgomery, OH	
2020	Daytona Beach, FL	0.9541
	Flagler, FL	
	Volusia, FL	
2030	Decatur, AL	0.9332
	Lawrence, AL	
	Morgan, AL	
2040	Decatur, IL	0.8494
	Macon, IL	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
2080	Denver, CO	1.0983
	Adams, CO	
	Arapahoe, CO	
	Denver, CO	
	Douglas, CO	
	Jefferson, CO	
2120	Des Moines, IA	0.9336
	Dallas, IA	
	Polk, IA	
	Warren, IA	
2160	Detroit, MI	1.1152
	Lapeer, MI	
	Macomb, MI	
	Monroe, MI	
	Oakland, MI	
	St. Clair, MI	
	Wayne, MI	
2180	Dothan, AL	0.8452
	Dale, AL	
	Houston, AL	
2190	Dover, DE	1.0949
	Kent, DE	
2200	Dubuque, IA	0.9059
	Dubuque, IA	
2240	Duluth-Superior, MN–WI	1.0936
	St. Louis, MN	
	Douglas, WI	
2281	Dutchess County, NY	1.1200
	Dutchess, NY	
2290	Eau Claire, WI	0.9463
	Chippewa, WI	
	Eau Claire, WI	
2320	El Paso, TX	0.9799
	El Paso, TX	
2330	Elkhart-Goshen, IN	1.0249
	Elkhart, IN	
2335	Elmira, NY	0.8949
	Chemung, NY	
2340	Enid, OK	0.8887
	Garfield, OK	
2360	Erie, PA	0.9269
	Erie, PA	
2400	Eugene-Springfield, OR	1.2199
	Lane, OR	
2440	Evansville-Henderson, IN–KY	0.9054
	Posey, IN	
	Vanderburgh, IN	
	Warrick, IN	
	Henderson, KY	
2520	Fargo-Moorhead, ND–MN	0.9855
	Clay, MN	
	Cass, ND	
2560	Fayetteville, NC	0.9600
	Cumberland, NC	
2580	Fayetteville-Springdale-Rogers, AR	0.8981
	Benton, AR	
	Washington, AR	
2620	Flagstaff, AZ–UT	1.1225
	Coconino, AZ	
	Kane, UT	
2640	Flint, MI	1.1605
	Genesee, MI	
2650	Florence, AL	0.8343
	Colbert, AL	
	Lauderdale, AL	
2655	Florence, SC	0.9275
	Florence, SC	
2670	Fort Collins-Loveland, CO	1.0682
	Larimer, CO	
2680	Ft. Lauderdale, FL	1.0946
	Broward, FL	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
2700	Fort Myers-Cape Coral, FL Lee, FL	0.9969
2710	Fort Pierce-Port St. Lucie, FL Martin, FL St. Lucie, FL	1.0862
2720	Fort Smith, AR–OK Crawford, AR Sebastian, AR Sequoyah, OK	0.8564
2750	Fort Walton Beach, FL Okaloosa, FL	0.9573
2760	Fort Wayne, IN Adams, IN Allen, IN De Kalb, IN Huntington, IN Wells, IN Whitley, IN	0.9787
2800	Fort Worth-Arlington, TX Hood, TX Johnson, TX Parker, TX Tarrant, TX	0.9990
2840	Fresno, CA Fresno, CA Madera, CA	1.0617
2880	Gadsden, AL Etowah, AL	0.9350
2900	Gainesville, FL Alachua, FL	1.0082
2920	Galveston-Texas City, TX Galveston, TX	1.0967
2960	Gary, IN Lake, IN Porter, IN	1.0134
2975	Glens Falls, NY Warren, NY Washington, NY	0.8865
2980	Goldsboro, NC Wayne, NC	0.9261
2985	Grand Forks, ND–MN Grand Forks, ND Polk, MN	0.9644
2995	Grand Junction, CO Mesa, CO	1.0176
3000	Grand Rapids-Muskegon-Holland, MI Allegan, MI Kent, MI Muskegon, MI Ottawa, MI	1.0685
3040	Great Falls, MT Cascade, MT	0.9433
3060	Greeley, CO Weld, CO	1.0097
3080	Green Bay, WI Brown, WI	0.9792
3120	Greensboro-Winston-Salem-High Point, NC Alamance, NC Davidson, NC Davie, NC Forsyth, NC Guilford, NC Randolph, NC Stokes, NC Yadkin, NC	1.0144
3150	Greenville, NC Pitt, NC	0.9878

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
3160	Greenville-Spartanburg-Anderson, SC	0.9802
	Anderson, SC	
	Cherokee, SC	
	Greenville, SC	
	Pickens, SC	
	Spartanburg, SC	
3180	Hagerstown, MD	0.8896
	Washington, MD	
3200	Hamilton-Middletown, OH	0.9876
	Butler, OH	
3240	Harrisburg-Lebanon-Carlisle, PA	1.0023
	Cumberland, PA	
	Dauphin, PA	
	Lebanon, PA	
	Perry, PA	
3283	Hartford, CT	1.2264
	Hartford, CT	
	Litchfield, CT	
	Middlesex, CT	
	Tolland, CT	
3285	Hattiesburg, MS	0.8000
	Forrest, MS	
	Lamar, MS	
3290	Hickory-Morganton-Lenoir, NC	0.9961
	Alexander, NC	
	Burke, NC	
	Caldwell, NC	
	Catawba, NC	
3320	Honolulu, HI	1.2271
	Honolulu, HI	
3350	Houma, LA	0.8481
	Lafourche, LA	
	Terrebonne, LA	
3360	Houston, TX	1.0242
	Chambers, TX	
	Fort Bend, TX	
	Harris, TX	
	Liberty, TX	
	Montgomery, TX	
	Waller, TX	
3400	Huntington-Ashland, WV–KY–OH	1.0226
	Boyd, KY	
	Carter, KY	
	Greenup, KY	
	Lawrence, OH	
	Cabell, WV	
	Wayne, WV	
3440	Huntsville, AL	0.9446
	Limestone, AL	
	Madison, AL	
3480	Indianapolis, IN	1.0313
	Boone, IN	
	Hamilton, IN	
	Hancock, IN	
	Hendricks, IN	
	Johnson, IN	
	Madison, IN	
	Marion, IN	
	Morgan, IN	
	Shelby, IN	
3500	Iowa City, IA	1.0484
	Johnson, IA	
3520	Jackson, MI	0.9844
	Jackson, MI	
3560	Jackson, MS	0.9030
	Hinds, MS	
	Madison, MS	
	Rankin, MS	
3580	Jackson, TN	0.9585
	Madison, TN	
	Chester, TN	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
3600	Jacksonville, FL	0.9808
	Clay, FL	
	Duval, FL	
	Nassau, FL	
	St. Johns, FL	
3605	Jacksonville, NC	0.8105
	Onslow, NC	
3610	Jamestown, NY	0.8561
	Chautauqua, NY	
3620	Janesville-Beloit, WI	1.0357
	Rock, WI	
3640	Jersey City, NJ	1.1887
	Hudson, NJ	
3660	Johnson City-Kingsport-Bristol, TN–VA	0.9164
	Carter, TN	
	Hawkins, TN	
	Sullivan, TN	
	Unicoi, TN	
	Washington, TN	
	Bristol City, VA	
	Scott, VA	
	Washington, VA	
3680	Johnstown, PA	0.9276
	Cambria, PA	
	Somerset, PA	
3700	Jonesboro, AR	0.8959
	Craighead, AR	
3710	Joplin, MO	0.9280
	Jasper, MO	
	Newton, MO	
3720	Kalamazoo-Battlecreek, MI	1.1314
	Calhoun, MI	
	Kalamazoo, MI	
	Van Buren, MI	
3740	Kankakee, IL	1.0516
	Kankakee, IL	
3760	Kansas City, KS–MO	1.0141
	Johnson, KS	
	Leavenworth, KS	
	Miami, KS	
	Wyandotte, KS	
	Cass, MO	
	Clay, MO	
	Clinton, MO	
	Jackson, MO	
	Lafayette, MO	
	Platte, MO	
	Ray, MO	
3800	Kenosha, WI	1.0175
	Kenosha, WI	
3810	Killeen-Temple, TX	0.9008
	Bell, TX	
	Coryell, TX	
3840	Knoxville, TN	0.9454
	Anderson, TN	
	Blount, TN	
	Knox, TN	
	Loudon, TN	
	Sevier, TN	
	Union, TN	
3850	Kokomo, IN	0.9705
	Howard, IN	
	Tipton, IN	
3870	La Crosse, WI–MN	0.9837
	Houston, MN	
	La Crosse, WI	
3880	Lafayette, LA	0.9086
	Acadia, LA	
	Lafayette, LA	
	St. Landry, LA	
	St. Martin, LA	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
3920	Lafayette, IN	0.9700
	Clinton, IN	
	Tippecanoe, IN	
3960	Lake Charles, LA	0.8257
	Calcasieu, LA	
3980	Lakeland-Winter Haven, FL	0.9642
	Polk, FL	
4000	Lancaster, PA	0.9886
	Lancaster, PA	
4040	Lansing-East Lansing, MI	1.0265
	Clinton, MI	
	Eaton, MI	
	Ingham, MI	
4080	Laredo, TX	0.8347
	Webb, TX	
4100	Las Cruces, NM	0.9168
	Dona Ana, NM	
4120	Las Vegas, NV–AZ	1.1891
	Mohave, AZ	
	Clarke, NV	
	Nye, NV	
4150	Lawrence, KS	0.8307
	Douglas, KS	
4200	Lawton, OK	0.9233
	Comanche, OK	
4243	Lewiston-Auburn, ME	0.9876
	Androscoggin, ME	
4280	Lexington, KY	0.9349
	Bourbon, KY	
	Clark, KY	
	Fayette, KY	
	Jessamine, KY	
	Madison, KY	
	Scott, KY	
	Woodford, KY	
4320	Lima, OH	1.0071
	Allen, OH	
	Auglaize, OH	
4360	Lincoln, NE	1.0818
	Lancaster, NE	
4400	Little Rock-North Little Rock, AR	0.9523
	Faulkner, AR	
	Lonoke, AR	
	Pulaski, AR	
	Saline, AR	
4420	Longview-Marshall, TX	0.9115
	Gregg, TX	
	Harrison, TX	
	Upshur, TX	
4480	Los Angeles-Long Beach, CA	1.2706
	Los Angeles, CA	
4520	Louisville, KY–IN	1.0133
	Clark, IN	
	Floyd, IN	
	Harrison, IN	
	Scott, IN	
	Bullitt, KY	
	Jefferson, KY	
	Oldham, KY	
4600	Lubbock, TX	0.8985
	Lubbock, TX	
4640	Lynchburg, VA	0.9680
	Amherst, VA	
	Bedford, VA	
	Bedford City, VA	
	Campbell, VA	
	Lynchburg City, VA	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
4680	Macon, GA	0.9525
	Bibb, GA	
	Houston, GA	
	Jones, GA	
	Peach, GA	
	Twiggs, GA	
4720	Madison, WI	1.0993
	Dane, WI	
4800	Mansfield, OH	0.9260
	Crawford, OH	
	Richland, OH	
4840	Mayaguez, PR	0.5589
	Anasco, PR	
	Cabo Rojo, PR	
	Hormigueros, PR	
	Mayaguez, PR	
	Sabana Grande, PR	
	San German, PR	
4880	McAllen-Edinburg-Mission, TX	0.8909
	Hidalgo, TX	
4890	Medford-Ashland, OR	1.0968
	Jackson, OR	
4900	Melbourne-Titusville-Palm Bay, FL	1.0542
	Brevard, Fl	
4920	Memphis, TN–AR–MS	0.9547
	Crittenden, AR	
	DeSoto, MS	
	Fayette, TN	
	Shelby, TN	
	Tipton, TN	
4940	Merced, CA	1.0578
	Merced, CA	
5000	Miami, FL	1.0581
	Dade, FL	
5015	Middlesex-Somerset-Hunterdon, NJ	1.2196
	Hunterdon, NJ	
	Middlesex, NJ	
	Somerset, NJ	
5080	Milwaukee-Waukesha, WI	1.0603
	Milwaukee, WI	
	Ozaukee, WI	
	Washington, WI	
	Waukesha, WI	
5120	Minneapolis-St. Paul, MN–WI	1.1623
	Anoka, MN	
	Carver, MN	
	Chisago, MN	
	Dakota, MN	
	Hennepin, MN	
	Isanti, MN	
	Ramsey, MN	
	Scott, MN	
	Sherbune, MN	
	Washington, MN	
	Wright, MN	
	Pierce, WI	
	St. Croix, WI	
5140	Missoula, MT	0.9958
	Missoula, MT	
5160	Mobile, AL	0.8595
	Baldwin, AL	
	Mobile, AL	
5170	Modesto, CA	1.1506
	Stanislaus, CA	
5190	Monmouth-Ocean, NJ	1.1539
	Monmouth, NJ	
	Ocean, NJ	
5200	Monroe, LA	0.8721
	Ouachita, LA	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
5240	Montgomery, AL	0.8000
	Autauga, AL	
	Elmore, AL	
	Montgomery, AL	
5280	Muncie, IN	1.0569
	Delaware, IN	
5330	Myrtle Beach, SC	0.9327
	Horry, SC	
5345	Naples, FL	1.0314
	Collier, FL	
5360	Nashville, TN	1.0373
	Cheatham, TN	
	Davidson, TN	
	Dickson, TN	
	Robertson, TN	
	Rutherford TN	
	Sumner, TN	
	Williamson, TN	
	Wilson, TN	
5380	Nassau-Suffolk, NY	1.4508
	Nassau, NY	
	Suffolk, NY	
5483	New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.3014
	Fairfield, CT	
	New Haven, CT	
5523	New London-Norwich, CT	1.2257
	New London, CT	
5560	New Orleans, LA	0.9609
	Jefferson, LA	
	Orleans, LA	
	Plaquemines, LA	
	St. Bernard, LA	
	St. Charles, LA	
	St. James, LA	
	St. John The Baptist, LA	
	St. Tammany, LA	
5600	New York, NY	1.5342
	Bronx, NY	
	Kings, NY	
	New York, NY	
	Putnam, NY	
	Queens, NY	
	Richmond, NY	
	Rockland, NY	
	Westchester, NY	
5640	Newark, NJ	1.2359
	Essex, NJ	
	Morris, NJ	
	Sussex, NJ	
	Union, NJ	
	Warren, NJ	
5660	Newburgh, NY–PA	1.1818
	Orange, NY	
	Pike, PA	
5720	Norfolk-Virginia Beach-Newport News, VA–NC	0.9123
	Currituck, NC	
	Chesapeake City, VA	
	Gloucester, VA	
	Hampton City, VA	
	Isle of Wight, VA	
	James City, VA	
	Mathews, VA	
	Newport News City, VA	
	Norfolk City, VA	
	Poquoson City, VA	
	Portsmouth City, VA	
	Suffolk City, VA	
	Virginia Beach City, VA	
	Williamsburg City, VA	
	York, VA	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
5775	Oakland, CA	1.6291
	Alameda, CA	
	Contra Costa, CA	
5790	Ocala, FL	1.0162
	Marion, FL	
5800	Odessa-Midland, TX	1.0745
	Ector, TX	
	Midland, TX	
5880	Oklahoma City, OK	0.9245
	Canadian, OK	
	Cleveland, OK	
	Logan, OK	
	McClain, OK	
	Oklahoma, OK	
	Pottawatomie, OK	
5910	Olympia, WA	1.2070
	Thurston, WA	
5920	Omaha, NE–IA	1.0328
	Pottawattamie, IA	
	Cass, NE	
	Douglas, NE	
	Sarpy, NE	
	Washington, NE	
5945	Orange County, CA	1.1828
	Orange, CA	
5960	Orlando, FL	1.0254
	Lake, FL	
	Orange, FL	
	Osceola, FL	
	Seminole, FL	
5990	Owensboro, KY	0.8863
	Daviess, KY	
6015	Panama City, FL	0.9636
	Bay, FL	
6020	Parkersburg-Marietta, WV–OH	0.8649
	Washington, OH	
	Wood, WV	
6080	Pensacola, FL	0.8891
	Escambia, FL	
	Santa Rosa, FL	
6120	Peoria-Pekin, IL	0.9329
	Peoria, IL	
	Tazewell, IL	
	Woodford, IL	
6160	Philadelphia, PA–NJ	1.1641
	Burlington, NJ	
	Camden, NJ	
	Gloucester, NJ	
	Salem, NJ	
	Bucks, PA	
	Chester, PA	
	Delaware, PA	
	Montgomery, PA	
	Philadelphia, PA	
6200	Phoenix-Mesa, AZ	1.0249
	Maricopa, AZ	
	Pinal, AZ	
6240	Pine Bluff, AR	0.8396
	Jefferson, AR	
6280	Pittsburgh, PA	1.0166
	Allegheny, PA	
	Beaver, PA	
	Butler, PA	
	Fayette, PA	
	Washington, PA	
	Westmoreland, PA	
6323	Pittsfield, MA	1.0930
	Berkshire, MA	
6340	Pocatello, ID	1.0047
	Bannock, ID	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
6360	Ponce, PR	0.6001
	Guayanilla, PR	
	Juana Diaz, PR	
	Penuelas, PR	
	Ponce, PR	
	Villalba, PR	
	Yauco, PR	
6403	Portland, ME	1.0025
	Cumberland, ME	
	Sagadahoc, ME	
	York, ME	
6440	Portland-Vancouver, OR–WA	1.1816
	Clackamas, OR	
	Columbia, OR	
	Multnomah, OR	
	Washington, OR	
	Yamhill, OR	
	Clark, WA	
6483	Providence-Warwick-Pawtucket, RI	1.1490
	Bristol, RI	
	Kent, RI	
	Newport, RI	
	Providence, RI	
	Washington, RI	
6520	Provo-Orem, UT	1.0467
	Utah, UT	
6560	Pueblo, CO	0.9150
	Pueblo, CO	
6580	Punta Gorda, FL	0.9587
	Charlotte, FL	
6600	Racine, WI	0.9925
	Racine, WI	
6640	Raleigh-Durham-Chapel Hill, NC	1.0441
	Chatham, NC	
	Durham, NC	
	Franklin, NC	
	Johnston, NC	
	Orange, NC	
	Wake, NC	
6660	Rapid City, SD	0.9431
	Pennington, SD	
6680	Reading, PA	1.0191
	Berks, PA	
6690	Redding, CA	1.1862
	Shasta, CA	
6720	Reno, NV	1.1082
	Washoe, NV	
6740	Richland-Kennewick-Pasco, WA	1.1655
	Benton, WA	
	Franklin, WA	
6760	Richmond-Petersburg, VA	1.0292
	Charles City County, VA	
	Chesterfield, VA	
	Colonial Heights City, VA	
	Dinwiddie, VA	
	Goochland, VA	
	Hanover, VA	
	Henrico, VA	
	Hopewell City, VA	
	New Kent, VA	
	Petersburg City, VA	
	Powhatan, VA	
	Prince George, VA	
	Richmond City, VA	
6780	Riverside-San Bernardino, CA	1.1817
	Riverside, CA	
	San Bernardino, CA	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
6800	Roanoke, VA	0.8902
	Botetourt, VA	
	Roanoke, VA	
	Roanoke City, VA	
	Salem City, VA	
6820	Rochester, MN	1.2189
	Olmsted, MN	
6840	Rochester, NY	0.9940
	Genesee, NY	
	Livingston, NY	
	Monroe, NY	
	Ontario, NY	
	Orleans, NY	
	Wayne, NY	
6880	Rockford, IL	0.9788
	Boone, IL	
	Ogle, IL	
	Winnebago, IL	
6895	Rocky Mount, NC	0.9687
	Edgecombe, NC	
	Nash, NC	
6920	Sacramento, CA	1.2581
	El Dorado, CA	
	Placer, CA	
	Sacramento, CA	
6960	Saginaw-Bay City-Midland, MI	1.0198
	Bay, MI	
	Midland, MI	
	Saginaw, MI	
6980	St. Cloud, MN	1.0476
	Benton, MN	
	Stearns, MN	
7000	St. Joseph, MO	0.8391
	Andrew, MO	
	Buchanan, MO	
7040	St. Louis, MO–IL	0.9497
	Franklin, MO	
	Jefferson, MO	
	Lincoln, MO	
	St. Charles, MO	
	St. Louis, MO	
	St. Louis City, MO	
	Warren, MO	
	Clinton, IL	
	Jersey, IL	
	Madison, IL	
	Monroe, IL	
	St. Clair, IL	
7080	Salem, OR	1.0646
	Marion, OR	
	Polk, OR	
7120	Salinas, CA	1.5615
	Monterey, CA	
7160	Salt Lake City-Ogden, UT	1.0489
	Davis, UT	
	Salt Lake, UT	
	Weber, UT	
7200	San Angelo, TX	0.8713
	Tom Green, TX	
7240	San Antonio, TX	0.9128
	Bexar, TX	
	Comal, TX	
	Guadalupe, TX	
	Wilson, TX	
7320	San Diego, CA	1.1979
	San Diego, CA	
7360	San Francisco, CA	1.5037
	Marin, CA	
	San Francisco, CA	
	San Mateo, CA	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
7400	San Jose, CA	1.5093
	Santa Clara, CA	
7440	San Juan-Bayamon, PR	0.5476
	Aguas Buenas, PR	
	Barceloneta, PR	
	Bayamon, PR	
	Canovanas, PR	
	Carolina, PR	
	Catano, PR	
	Ceiba, PR	
	Comerio, PR	
	Corozal, PR	
	Dorado, PR	
	Fajardo, PR	
	Florida, PR	
	Guaynabo, PR	
	Humacao, PR	
	Juncos, PR	
	Los Piedras, PR	
	Loiza, PR	
	Luguillo, PR	
	Manati, PR	
	Morovis, PR	
	Naguabo, PR	
	Naranjito, PR	
	Rio Grande, PR	
	San Juan, PR	
	Toa Alta, PR	
	Toa Baja, PR	
	Trujillo Alto, PR	
	Vega Alta, PR	
	Vega Baja, PR	
	Yabucoa, PR	
7460	San Luis Obispo-Atascadero-Paso Robles, CA	1.1687
	San Luis Obispo, CA	
7480	Santa Barbara-Santa Maria-Lompoc, CA	1.1487
	Santa Barbara, CA	
7485	Santa Cruz-Watsonville, CA	1.4856
	Santa Cruz, CA	
7490	Santa Fe, NM	1.0841
	Los Alamos, NM	
	Santa Fe, NM	
7500	Santa Rosa, CA	1.3861
	Sonoma, CA	
7510	Sarasota-Bradenton, FL	1.0730
	Manatee, FL	
	Sarasota, FL	
7520	Savannah, GA	1.0653
	Bryan, GA	
	Chatham, GA	
	Effingham, GA	
7560	Scranton-Wilkes-Barre-Hazleton, PA	0.9234
	Columbia, PA	
	Lackawanna, PA	
	Luzerne, PA	
	Wyoming, PA	
7600	Seattle-Bellevue-Everett, WA	1.2082
	Island, WA	
	King, WA	
	Snohomish, WA	
7610	Sharon, PA	0.8429
	Mercer, PA	
7620	Sheboygan, WI	0.8961
	Sheboygan, WI	
7640	Sherman-Denison, TX	0.9967
	Grayson, TX	
7680	Shreveport-Bossier City, LA	0.9624
	Bossier, LA	
	Caddo, LA	
	Webster, LA	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
7720	Sioux City, IA–NE	0.9323
	Woodbury, IA	
	Dakota, NE	
7760	Sioux Falls, SD	0.9719
	Lincoln, SD	
	Minnehaha, SD	
7800	South Bend, IN	1.0627
	St. Joseph, IN	
7840	Spokane, WA	1.1345
	Spokane, WA	
7880	Springfield, IL	0.9226
	Menard, IL	
	Sangamon, IL	
7920	Springfield, MO	0.9110
	Christian, MO	
	Greene, MO	
	Webster, MO	
8003	Springfield, MA	1.1571
	Hampden, MA	
	Hampshire, MA	
8050	State College, PA	0.9712
	Centre, PA	
8080	Steubenville-Weirton, OH–WV	0.9185
	Jefferson, OH	
	Brooke, WV	
	Hancock, WV	
8120	Stockton-Lodi, CA	1.1501
	San Joaquin, CA	
8140	Sumter, SC	0.8288
	Sumter, SC	
8160	Syracuse, NY	1.0231
	Cayuga, NY	
	Madison, NY	
	Onondaga, NY	
	Oswego, NY	
8200	Tacoma, WA	1.2353
	Pierce, WA	
8240	Tallahassee, FL	0.9068
	Gadsden, FL	
	Leon, FL	
8280	Tampa-St. Petersburg-Clearwater, FL	0.9491
	Hernando, FL	
	Hillsborough, FL	
	Pasco, FL	
	Pinellas, FL	
8320	Terre Haute, IN	0.9073
	Clay, IN	
	Vermillion, IN	
	Vigo, IN	
8360	Texarkana, AR-Texarkana, TX	0.8855
	Miller, AR	
	Bowie, TX	
8400	Toledo, OH	1.0431
	Fulton, OH	
	Lucas, OH	
	Wood, OH	
8440	Topeka, KS	0.9477
	Shawnee, KS	
8480	Trenton, NJ	1.1077
	Mercer, NJ	
8520	Tucson, AZ	0.9536
	Pima, AZ	
8560	Tulsa, OK	0.9467
	Creek, OK	
	Osage, OK	
	Rogers, OK	
	Tulsa, OK	
	Wagoner, OK	
8600	Tuscaloosa, AL	0.8689
	Tuscaloosa, AL	
8640	Tyler, TX	1.0252
	Smith, TX	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
8680	Utica-Rome, NY	0.8857
	Herkimer, NY	
	Oneida, NY	
8720	Vallejo-Fairfield-Napa, CA	1.4422
	Napa, CA	
	Solano, CA	
8735	Ventura, CA	1.1691
	Ventura, CA	
8750	Victoria, TX	0.8856
	Victoria, TX	
8760	Vineland-Millville-Bridgeton, NJ	1.1103
	Cumberland, NJ	
8780	Visalia-Tulare-Porterville, CA	1.0239
	Tulare, CA	
8800	Waco, TX	0.8645
	McLennan, TX	
8840	Washington, DC–MD–VA–WV	1.1657
	District of Columbia, DC	
	Calvert, MD	
	Charles, MD	
	Frederick, MD	
	Montgomery, MD	
	Prince Georges, MD	
	Alexandria City, VA	
	Arlington, VA	
	Clarke, VA	
	Culpeper, VA	
	Fairfax, VA	
	Fairfax City, VA	
	Falls Church City, VA	
	Fauquier, VA	
	Fredericksburg City, VA	
	King George, VA	
	Loudoun, VA	
	Manassas City, VA	
	Manassas Park City, VA	
	Prince William, VA	
	Spotsylvania, VA	
	Stafford, VA	
	Warren, VA	
	Berkeley, WV	
	Jefferson, WV	
8920	Waterloo-Cedar Falls, IA	0.8551
	Black Hawk, IA	
8940	Wausau, WI	1.0311
	Marathon, WI	
8960	West Palm Beach-Boca Raton, FL	1.0397
	Palm Beach, FL	
9000	Wheeling, WV–OH	0.8491
	Belmont, OH	
	Marshall, WV	
	Ohio, WV	
9040	Wichita, KS	1.0215
	Butler, KS	
	Harvey, KS	
	Sedgwick, KS	
9080	Wichita Falls, TX	0.8366
	Archer, TX	
	Wichita, TX	
9140	Williamsport, PA	0.9175
	Lycoming, PA	
9160	Wilmington-Newark, DE–MD	1.1567
	New Castle, DE	
	Cecil, MD	
9200	Wilmington, NC	1.0006
	Brunswick, NC	
	New Hanover, NC	
9260	Yakima, WA	1.1237
	Yakima, WA	
9270	Yolo, CA	1.0316
	Yolo, CA	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA Code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
9280	York, PA York, PA	1.0040
9320	Youngstown-Warren, OH Columbiana, OH Mahoning, OH Trumbull, OH	1.0170
9340	Yuba City, CA Sutter, CA Yuba, CA	1.1016
9360	Yuma, AZ Yuma, AZ	0.9559

[1] This column lists each MSA area name and each county or county equivalent, in the MSA area. Counties not listed in this Table are considered to be Rural Areas. Wage Index values for these areas are found in Table B.

[2] Wage index values are based on FY 1998 hospital cost report data before reclassification. This wage index is further adjusted. Wage index values greater than 0.8 are subject to a budget-neutrality adjustment of 1.063422. Wage index values below 0.8 are adjusted to be the greater of a 15-percent increase, subject to a maximum wage index value of 0.8, or an adjustment by multiplying the hospital wage index value for a given area by the budget-neutrality adjustment. We have completed all of these adjustments and included them in the wage index values reflected in this table.

TABLE B.—WAGE INDEX FOR RURAL AREAS

MSA code No.	Nonurban area	Wage index [3]
9901	Alabama	0.8000
9902	Alaska	1.2614
9903	Arizona	0.9232
9904	Arkansas	0.8000
9905	California	1.0272
9906	Colorado	0.9370
9907	Connecticut	1.2843
9908	Delaware	1.0197
9910	Florida	0.9352
9911	Georgia	0.8821
9912	Hawaii	1.1817
9913	Idaho	0.9271
9914	Illinois	0.8564
9915	Indiana	0.9274
9916	Iowa	0.8664
9917	Kansas	0.8307
9918	Kentucky	0.8468
9919	Louisiana	0.8078
9920	Maine	0.9274
9921	Maryland	0.9421
9922	Massachusetts	1.2180
9923	Michigan	0.9571
9924	Minnesota	0.9608
9925	Mississippi	0.8005
9926	Missouri	0.8391
9927	Montana	0.9204
9928	Nebraska	0.8658
9929	Nevada	1.0344
9930	New Hampshire	1.0399
9931	New Jersey [4]	.....
9932	New Mexico	0.9226
9933	New York	0.9089
9934	North Carolina	0.9076
9935	North Dakota	0.8379
9936	Ohio	0.9218
9937	Oklahoma	0.8046
9938	Oregon	1.0663
9939	Pennsylvania	0.9153
9940	Puerto Rico	0.5520
9941	Rhode Island [4]	.....
9942	South Carolina	0.9052
9943	South Dakota	0.8360
9944	Tennessee	0.8431
9945	Texas	0.8201
9946	Utah	0.9625
9947	Vermont	1.0066
9948	Virgin Islands	0.7759
9949	Virginia	0.8764
9950	Washington	1.0856

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

MSA code No.	Nonurban area	Wage index [3]
9951	West Virginia	0.8579
9952	Wisconsin	0.9641
9953	Wyoming	0.9302
9965	Guam	1.0221

[3] Wage index values are based on FY 1998 hospital cost report data before reclassification. This wage index is further adjusted. Wage index values greater than 0.8 are subject to a budget-neutrality adjustment of 1.063422. Wage index values below 0.8 are adjusted to be the greater of a 15-percent increase, subject to a maximum wage index value of 0.8, or an adjustment by multiplying the hospital wage index value for a given area by the budget-neutrality adjustment. We have completed all of these adjustments and have included them in the wage index values reflected in this table.

[4] All counties within the State are classified as urban.

II. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice such as this take effect. We can waive this procedure, however, if we find good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and its reasons in the notice issued.

We find it unnecessary to undertake notice and comment rulemaking as the statute requires annual updates to the hospice payment rates. The methodologies used to determine the wage index have been previously subject to public comments, and this notice merely reflects the application of those previously established methodologies. Therefore, for good cause, we waive notice and comment procedures.

III. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (Pub.L. 104–4), and Executive Order 13132. In this notice, we identified the impact on hospices as a result of updating the hospice wage index for FY 2003. The methodology for computing the wage index was determined through a negotiated rulemaking committee and implemented in the August 8, 1997 Final Rule (62 FR 42860). This notice only updates the hospice wage index in accordance with that methodology. We believe these changes to be insignificant. As Table C below indicates, we estimate that total hospice payments will increase from last year by 0.3 percent, or $12,731,000.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We have determined that this notice is not an economically significant rule under this Executive Order.

The RFA requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospital and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. (For details, see the Small Business Administration's regulation that set forth size standards for health care industries (65 FR 69432)). For purposes of the RFA, most hospices are small entities. Approximately 73 percent of Medicare certified hospices are identified as voluntary, government, or other agencies, and, therefore, are considered small entities. Because the National Hospice and Palliative Care Organization estimates that approximately 79 percent of hospice patients are Medicare beneficiaries, we have not considered other sources of revenue in this analysis.

As discussed below, the estimated decreases in payment to hospices overall are very slight. The effects of this notice indicate that on a regional basis, urban hospices in the Middle Atlantic, East North Central, West North Central, West South Central, and Pacific regions will experience a slight decrease in payments. The payment decreases range from a minimum of 0.1 percent (East North Central region) to a maximum of 0.5 percent (Middle Atlantic region). The mid-range of the decrease in estimated payments for urban hospices falls within the Pacific urban region with a 0.3-percent decrease. Rural hospices in the Pacific region will also experience a slight decrease in payment of 0.7 percent. Therefore, based on an analysis of the wage index changes for FY 2003, hospices in the urban areas of the North Central (East and West), South Central (West), and Middle Atlantic regions will be impacted the most. This payment decrease to these small entities indicates that this notice will have an impact on a substantial number of small entities. However, nationwide, hospices will receive an overall slight increase in estimated payments. We estimate that total hospice payments will increase by 0.3 percent, or $12,731,000. Urban hospices will receive an increase in estimated payments of 0.1 percent and rural hospices will receive an increase in estimated payments of 2.1 percent. Rural hospices, with exception of the Pacific region, received the largest increase in payments for FY 2003. We estimate that rural hospice payments overall will increase by $9,860,000. Specifically, rural hospices in Puerto Rico are estimated to receive a 13.6-percent increase in payments for FY 2003. This anomaly is due to an increase in hospital wage data for FY 2002.

Under the Medicare hospice benefit, hospices can provide four different levels of care days. The majority of the days provided by a hospice are routine home care days. Therefore, the number of routine home care days can be used as a proxy for the size of the hospice, that is, the more days of care provided, the larger the hospice. Using routine home care days as a proxy for size, our analysis indicates that, overall, the impact of the wage index update on small hospices will be positive. For example, the smallest hospices (those that provide only up to 1,754 days of routine home care) will experience an approximately 4.2 percent increase in hospice payments as a result of the wage

update. Overall, hospices will experience a positive increase in payments. Therefore, we certify that this rule will not have a significant impact on a substantial number of small entities, in accordance with the RFA. Furthermore, the wage index methodology was previously determined by consensus through a negotiated rulemaking committee that included representatives of national hospice associations; rural, urban, large and small hospices; multi-site hospices; and consumer groups. Based on all of the options considered, the committee agreed on the methodology described in the committee statement, and it was adopted into regulation in the August 8, 1997 final rule. The committee also agreed that this was favorable for the hospice community, as well as for beneficiaries. In developing the process for updating the wage index in the 1997 final rule, we fully considered the impact of this methodology on small entities and attempted to mitigate any potential negative effects.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside an MSA and has fewer than 100 beds. We have determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $110 million or more. This notice has no consequential effect on State, local, or tribal governments. We believe the private sector costs of this notice fall below the threshold as well. We have determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism, and have determined that this notice will not have a negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

B. Anticipated Effects

We have compared estimated payments using the FY 1983 hospice wage index to estimated payments using the FY 2003 wage index and determined the current hospice rates to be budget-neutral. This impact analysis compares hospice payments using the FY 2002 hospice wage index to the estimated payments using the FY 2003 wage index. The data used in developing the quantitative analysis for this notice were obtained from the March 2002 update of the national claims history file of all bills submitted during FY 2001. We deleted bills from hospices that have since closed.

Table C below demonstrates the results of our analysis. In Column 2 of Table C, we indicate the number of routine home care days that were included in our analysis, although the analysis was performed on all types of hospice care. Column 3 of Table C indicates payments that were made using the FY 2002 wage index. Column 4 of Table C is based on FY 2001 claims (for hospices in business during that time period) and estimates payments to be made to hospices using the FY 2003 wage index. The final column, which compares Columns 3 and 4, shows the percent change in estimated hospice payments made based on the category of the hospice.

Table C categorizes hospices by various geographic and provider characteristics. The first row displays the results of the impact analysis for all Medicare certified hospices. The second and third rows of the table categorize hospices according to their geographic location (urban and rural). Our analysis indicated that there are 1,327 hospices located in urban areas and 854 hospices located in rural areas. The next two groupings in the table indicate the number of hospices by census region, also broken down by urban and rural hospices. The sixth grouping shows the impact on hospices based on the size of the hospice's program. We determined that the majority of hospice payments are made at the routine home care rate. Therefore, we based the size of each individual hospice's program on the number of routine home care days provided in 2001. The next grouping shows the impact on hospices by type of ownership. The final grouping shows the impact on hospices defined by whether they are provider-based or freestanding.

The results of our analysis shows that the greatest increases in payment are for rural areas in the West South Central, Mountain and Puerto Rico regions, with a 7.2 percent, 2.5 percent, and 13.6 percent increase, respectively. The greatest decreases in payment are for urban areas in the Middle Atlantic and Pacific regions.

The breakdown by size, type of ownership, and facility base showed an increase in payments to almost all hospice programs. Small hospice programs showed significant increases of about 4 percent, while larger programs experienced only a negligible increase. In terms of hospice base, hospital-based hospices showed the greatest estimated payment increase while hospices affiliated with skilled nursing facilities showed the smallest amount of payment increase.

TABLE C.—IMPACT OF HOSPICE WAGE INDEX CHANGE

By Geographic Location	Number of Hospices (1)	Number of Routine Home Care Days in Thousands (2)	Payments using FY 2002 Wage Index in Thousands (3)	Estimated Payments using FY 2003 Wage Index in Thousands (4)	Percent Change in Hospice Payments (5)
All Hospices	2,181	28,249	3,684,027	3,696,758	0.3
Urban Hospices	1,327	23,705	3,207,208	3,210,078	0.1
Rural Hospices	854	4,545	476,820	486,680	2.1
By Region—Urban:					
New England	87	755	116,018	116,611	0.5
Middle Atlantic	166	2,651	380,513	378,736	-0.5
South Atlantic	184	5,216	755,293	759,251	0.5

TABLE C.—IMPACT OF HOSPICE WAGE INDEX CHANGE—Continued

By Geographic Location	Number of Hospices (1)	Number of Routine Home Care Days in Thousands (2)	Payments using FY 2002 Wage Index in Thousands (3)	Estimated Payments using FY 2003 Wage Index in Thousands (4)	Percent Change in Hospice Payments (5)
East North Central	224	3,861	515,761	515,007	-0.1
East South Central	98	1,639	191,446	192,498	0.5
West North Central	97	1,443	170,906	170,654	-0.1
West South Central	183	3,337	415,324	414,764	-0.1
Mountain	89	1,635	230,315	231,781	0.6
Pacific	171	2,885	410,028	408,742	-0.3
Puerto Rico	28	283	21,604	22,035	2.0
By Region—Rural:					
New England	27	84	9,942	9,995	0.5
Middle Atlantic	34	200	22,721	22,770	0.2
South Atlantic	127	932	99,489	101,282	1.8
East North Central	139	675	72,904	73,109	0.3
East South Central	88	792	78,897	80,363	1.9
West North Central	180	499	53,251	53,931	1.3
West South Central	105	707	64,846	69,525	7.2
Mountain	93	336	37,037	37,954	2.5
Pacific	57	293	35,822	35,580	-0.7
Puerto Rico	4	28	1,911	2,171	13.6
Routine Home Care Days:					
0–1,754 Days	342	309	35,324	36,811	4.2
1,754–4,373 Days	445	1,337	149,372	151,600	1.5
4,373–9,681 Days	543	3,698	433,227	437,293	0.9
9,681+Days	850	22,540	3,021,406	3,026,583	0.2
Type of Ownership:					
Voluntary	1,335	17,593	2,304,550	2,308,749	0.2
Proprietary	626	9,872	1,286,655	1,294,446	0.6
Government	185	646	76,624	77,398	1.0
Other	35	139	16,199	16,164	-0.2
Hospice Base:					
Freestanding	960	17,736	2,336,621	2,344,044	0.3
Home Health Agency	661	6,184	808,876	810,740	0.2
Hospital	543	4,172	514,913	518,370	0.7
Skilled Nursing Facility	17	158	23,617	23,604	-0.1

C. Conclusion

Our impact analysis compared hospice payments using the FY 2002 wage index to the estimated payments using the FY 2003 wage index. Through the analysis, we estimate that total hospice payments will increase from last year by 0.3 percent, or $12,731.000. Additionally, we compared estimated payments using the FY 1983 hospice wage index to estimated payments using the FY 2003 wage index and determined the current hospice wage index to be budget neutral, as required by the negotiated rulemaking committee. We have determined that this rule is not an economically significant rule under Executive Order 12866. We do believe that this rule will not have a significant economic impact on a substantial number of small entities, but took any negative effects into consideration during the negotiated rulemaking process. We have determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals. Finally, this rule will have no consequential effect on State, local, or tribal governments.

OMB Review

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget reviewed this regulation.

Authority: Section 1814(i) of the Social Security Act (42 U.S.C. 1395f (i)(1))(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 20, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: July 23, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–22018 Filed 8–29–02; 8:45 am]

BILLING CODE 4120–01–P

Federal Register

Friday,
August 30, 2002

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts Ch. 1, 2, 7, 8, et al.
Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–09; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules and technical amendments.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–09. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.arnet.gov/far.*

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–09 and specific FAR case number(s). Interested parties may also visit our website at *http://www.arnet.gov/far.*

Item	Subject	FAR case	Analyst
I	Task-Order and Delivery-Order Contracts	1999–303	Wise.
II	Temporary Emergency Procurement Authority (Interim)	2002–003	Moss.
III	Veterans Entrepreneurship and Small Business Development Act of 1999	2000–302	Cundiff.
IV	Trade Agreements Thresholds	2002–009	Davis.
V	Payments Under Fixed-Price Construction Contracts	2001–012	Olson.
VI	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001–09 amends the FAR as specified below:

Item I—Task-Order and Delivery-Order Contracts (FAR Case 1999–303)

This final rule amends the Federal Acquisition Regulation (FAR) to further implement subsections 804(a) and (b) of the National Defense Authorization Act for Fiscal Year 2000 concerning task-order and delivery-order contracts.

With respect to acquisition planning, the rule draws greater attention to the capital planning requirements of the Clinger-Cohen Act (40 U.S.C. 1422) and ensures more deliberation by agency acquisition planners before orders are placed under a Federal Supply Schedule contract, or task-order contract or delivery-order contract awarded by another agency (*i.e.*, Governmentwide acquisition contract or multi-agency contract).

With respect to the structuring of orders and the consideration given to contract holders prior to order placement, the rule (1) increases attention to modular contracting principles to help agencies avoid unnecessarily large and inadequately defined orders, (2) facilitates information exchange during the fair opportunity process so that contractors may develop and propose solutions that enable the Government to award performance-based orders, and (3) revises existing documentation requirements to address tradeoff decisions as well as the issuance of sole-source orders as logical follow-ons to orders already issued under the contract. This rule also adds a separate definition for the terms ''Governmentwide acquisition contract (GWAC)'' and ''Multi-agency contract (MAC)'' to the FAR to clarify the difference between the terms and the purpose of each contract vehicle.

Item II—Temporary Emergency Procurement Authority (FAR Case 2002–003)

This interim rule implements Section 836 of the Fiscal Year 2002 National Defense Authorization Act which increases the amount of the micro-purchase threshold and the simplified acquisition threshold for procurements of supplies or services by or for DoD during fiscal years 2002 and 2003, where those procurements are to facilitate the defense against terrorism or biological or chemical attack against the United States. Also, contracting officers acquiring biotechnology supplies or biotechnology services, for use to facilitate the defense against terrorism or biological or chemical attack against the United States, may treat the supplies or services as commercial items.

Item III—Veterans Entrepreneurship and Small Business Development Act of 1999 (FAR Case 2000–302)

This final rule finalizes two interim rules published previously at 65 FR 60542, October 11, 2000 (FAC 97–20), and 66 FR 53492, October 22, 2001 (FAC 2001–01), respectively. The first interim rule implemented portions of the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50), which added a subcontracting plan goal for veteran-owned small businesses and a 3 percent Governmentwide agency goal for service-disabled veteran-owned small businesses. The second interim rule implemented Section 803 of the Small Business Reauthorization Act of 2000 (part of the Consolidated Appropriations Act, 2001, Pub. L. 106–554), which added an additional subcontracting plan goal for service-disabled veteran-owned small business concerns. Both rules, and the correction published at 67 FR 1858, January 14, 2002 (FAC 2001–01 Correction), are adopted as final without change.

Item IV—Trade Agreements Thresholds (FAR Case 2002–009)

This final rule amends FAR Subparts 22.15, 25.2, 25.4, 25.6, 25.11, and the clauses at 52.213–4 and 52.222–19 to implement new dollar thresholds for application of the Trade Agreements Act and North American Free Trade Agreement as published by the U.S. Trade Representative in the **Federal Register** at 67 FR 14763, March 27, 2002. Contracting officers must review the new thresholds when acquiring supplies, services, or construction in order to select the appropriate clauses to implement the Buy American Act, trade agreements, and sanctions of European

Union country end products and services.

Item V—Payments Under Fixed-Price Construction Contracts (FAR Case 2001–012)

This final rule amends the FAR to clarify in the certification language of the clause entitled Payments Under Fixed-Price Construction Contracts that *all* payments due to subcontractors and suppliers have been made by the prime contractor from previous progress payments received from the Government. The rule is of special interest to contracting officers that administer construction contracts.

Item VI—Technical Amendments

These amendments update sections and make editorial changes at FAR 22.1503, 36.606, and 52.232–16.

Dated: August 21, 2002.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–09 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–09 are effective September 30, 2002, except for Items II and III which are effective August 30, 2002.

Dated: August 15, 2002.

Deidre A. Lee,

Director, Defense Procurement.

Dated: August 21, 2002.

Patricia A. Brooks,

Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: August 14, 2002.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 02–21866 Filed 8–29–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 7, 8, 16, 17, and 52

[FAC 2001–09; FAR Case 1999–303; Item I]

RIN 9000–AI72

Federal Acquisition Regulation; Task-Order and Delivery-Order Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to further implement subsections 804(a) and (b) of the National Defense Authorization Act for Fiscal Year 2000. These subsections focus primarily on appropriate use of task-order and delivery-order contracts and specific steps agencies should take when placing orders under task-order and delivery-order contracts established by another agency. The rule also clarifies that written acquisition plans may be required for orders as determined by the agency head.

DATES: *Effective Date:* September 30, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Julia Wise, Procurement Analyst, at (202) 208–1168. Please cite FAC 2001–09, FAR case 1999–303.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a final rule, FAR case 1999–014, Competition Under Multiple Award Contracts, in the **Federal Register** at 65 FR 24317, April 25, 2000, to clarify what contracting officers should consider when planning for multiple awards of indefinite-delivery contracts, and clarify how orders should be placed against the resultant contracts. That rule implemented portions of subsections 804(a) and (b) of the National Defense Authorization Act for Fiscal Year 2000. This rule further strengthens that policy and the implementation of subsections 804(a) and (b) of the National Defense Authorization Act for Fiscal Year 2000 in several ways.

With respect to acquisition planning, the rule draws greater attention to the capital planning requirements of the Clinger-Cohen Act (40 U.S.C. 1422) and ensures more deliberation by agency acquisition planners before orders are placed under a Federal Supply Schedule contract; or task-order contract or delivery-order contract awarded by another agency, (*i.e.*, Governmentwide acquisition contract or multi-agency contract). The Councils are continuing to review the agency acquisition planning practices of customers of interagency contracts to determine if additional guidance is needed to ensure strategic use of these vehicles.

With respect to the structuring of orders and the consideration given to contract holders prior to order placement, the rule (1) increases attention to modular contracting principles to help agencies avoid unnecessarily large and inadequately defined orders, (2) facilitates information exchange during the fair opportunity process so that contractors may develop and propose solutions that enable the Government to award performance-based orders, and (3) revises existing documentation requirements to address tradeoff decisions as well as the issuance of sole-source orders as logical follow-ons to orders already issued under the contract.

This rule also adds to the FAR a separate definition for the terms ''Governmentwide acquisition contract (GWAC)'' and ''Multi-agency contract (MAC)'' to clarify the difference between the terms and the purpose of each contract vehicle.

A proposed rule was published in the **Federal Register** at 66 FR 44518, August 23, 2001. Four sources submitted comments in response to the proposed rule. This final rule includes a change based on some of the comments received. Substantive public comments addressed the need for additional clarification pertaining to the application of the Economy Act within the proposed definition of multi-agency contract. The definition states that supplies and services would be obtained ''consistent with'' the Economy Act. The Councils agreed that clarification was needed. Accordingly, the definition of multi-agency contract was amended by adding a reference to FAR 17.500(b), which expressly provides that the Economy Act is not applicable if an interagency acquisition is authorized under a more specific statutory

authority. In other words, use of more specific authority, if it exists, would still be ''consistent with'' the Economy Act.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule makes various changes to improve the use of task-order contracts and delivery-order contracts. The primary focus is on usage of these contracts where multiple awards are made and where the contracts are being used to support inter-agency transactions. Some aspects of the final rule (*e.g.*, planning, documentation) largely address the internal operating procedures of Government agencies. The changes that affect small entities should have a slight positive effect by, among other things, strengthening use of the fair opportunity process to ensure small entities are appropriately being given opportunities to pursue business opportunities under multiple award task-order and delivery-order contracts. The rule further acknowledges that access to small business concerns is an appropriate factor for an agency to consider as part of its acquisition planning prior to placing an order under a contract awarded by another agency.

We did not receive any comments regarding this determination as a result of publication of the proposed rule in the **Federal Register** at 66 FR 44518, August 23, 2001.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 7, 8, 16, 17, and 52

Government procurement.

Dated: August 21, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 7, 8, 16, 17, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 7, 8, 16, 17, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions ''Governmentwide acquisition contract (GWAC)'' and ''Multi-agency contract (MAC)'' to read as follows:

2.101 Definitions.

* * * * *

Governmentwide acquisition contract (GWAC) means a task-order or delivery-order contract for information technology established by one agency for Governmentwide use that is operated—

(1) By an executive agent designated by the Office of Management and Budget pursuant to section 5112(e) of the Clinger-Cohen Act, 40 U.S.C. 1412(e); or

(2) Under a delegation of procurement authority issued by the General Services Administration (GSA) prior to August 7, 1996, under authority granted GSA by the Brooks Act, 40 U.S.C. 759 (repealed by Public Law 104–106). The Economy Act does not apply to orders under a Governmentwide acquisition contract.

* * * * *

Multi-agency contract (MAC) means a task-order or delivery-order contract established by one agency for use by Government agencies to obtain supplies and services, consistent with the Economy Act (see 17.500(b)). Multi-agency contracts include contracts for information technology established pursuant to section 5124(a)(2) of the Clinger-Cohen Act, 40 U.S.C. 1424(a)(2).

* * * * *

PART 7—ACQUISITION PLANNING

3. Amend section 7.101 by adding, in alphabetical order, the definition ''Order'' to read as follows:

7.101 Definitions.

* * * * *

Order means an order placed under a—

(1) Federal Supply Schedule contract; or

(2) Task-order contract or delivery-order contract awarded by another agency, (*i.e.*, Governmentwide acquisition contract or multi-agency contract).

* * * * *

4. Amend section 7.103 by revising paragraphs (e) and (q); and adding paragraph (t) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(e) Writing plans either on a systems basis, on an individual contract basis, or on an individual order basis, depending upon the acquisition.

* * * * *

(q) Ensuring that no purchase request is initiated or contract entered into that would result in the performance of an inherently governmental function by a contractor and that all contracts or orders are adequately managed so as to ensure effective official control over contract or order performance.

* * * * *

(t) Ensuring that agency planners on information technology acquisitions comply with the capital planning and investment control requirements in 40 U.S.C. 1422 and OMB Circular A–130.

5. Amend section 7.104 by revising the first sentence of paragraph (a); in the second sentence of paragraph (b) by adding ''with'' after the word ''consult''; and by revising the second sentence of paragraph (c) to read as follows:

7.104 General procedures.

(a) Acquisition planning should begin as soon as the agency need is identified, preferably well in advance of the fiscal year in which contract award or order placement is necessary. * * *

* * * * *

(c) * * * If the plan proposes using other than full and open competition when awarding a contract, the plan shall also be coordinated with the cognizant competition advocate.

6. Amend section 7.105 in the first sentence of the introductory paragraph by removing ''subparagraph'' and adding ''paragraph'' in its place, and in the last sentence by adding ''or orders'' after the word ''contracts''; and by revising paragraph (b)(4) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(4) *Acquisition considerations.* (i) For each contract contemplated, discuss contract type selection (*see* part 16); use of multiyear contracting, options, or other special contracting methods (*see* part 17); any special clauses, special solicitation provisions, or FAR

deviations required (*see* subpart 1.4); whether sealed bidding or negotiation will be used and why; whether equipment will be acquired by lease or purchase (*see* subpart 7.4) and why; and any other contracting considerations.

(ii) For each order contemplated, discuss—

(A) For information technology acquisitions, how the capital planning and investment control requirements of 40 U.S.C. 1422 and OMB Circular A–130 will be met (*see* 7.103(t) and part 39); and

(B) Why this action benefits the Government, such as when—

(*1*) The agency can accomplish its mission more efficiently and effectively (*e.g.*, take advantage of the servicing agency's specialized expertise; or gain access to contractors with needed expertise); or

(*2*) Ordering through an indefinite delivery contract facilitates access to small business concerns, including small disadvantaged business concerns, 8(a) contractors, women-owned small business concerns, HUBZone small business concerns, veteran-owned small business concerns, or service-disabled veteran-owned small business concerns.

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.001 through 8.003 [Redesignated as 8.002 through 8.004]

7. Redesignate sections 8.001 through 8.003 as 8.002 through 8.004, respectively; and add a new section 8.001;

7a. In the newly designated section 8.002 remove from the introductory text of paragraph (a) ''8.002'' and add ''8.003'' in its place; and in the second sentence of the newly designated section 8.004, remove ''must'' and add ''shall'' (twice) in its place.

The added text reads as follows:

8.001 General.

Regardless of the source of supplies or services to be acquired, information technology acquisitions shall comply with capital planning and investment control requirements in 40 U.S.C. 1422 and OMB Circular A–130.

* * * * *

8.401 [Amended]

8. Amend section 8.401 in the first sentence of paragraph (a) by removing ''8.001'' and adding ''8.002'' in its place.

9. Amend section 8.404 by revising paragraph (a) to read as follows:

8.404 Using schedules.

(a) *General.* (1) Parts 13 and 19 do not apply to orders placed against Federal Supply Schedules, except for the provision at 13.303–2(c)(3). Orders placed against a Multiple Award Schedule (MAS), using the procedures in this subpart, are considered to be issued using full and open competition (see 6.102(d)(3)).

(i) Ordering offices need not seek further competition, synopsize the requirement, make a separate determination of fair and reasonable pricing, or consider small business programs.

(ii) GSA has already determined the prices of items under schedule contracts to be fair and reasonable. By placing an order against a schedule using the procedures in this section, the ordering office has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs.

(2) Orders placed under a Federal Supply Schedule contract are not exempt from the development of acquisition plans (see subpart 7.1), and an information technology acquisition strategy (see part 39).

* * * * *

8.602 [Amended]

10. Amend section 8.602 in the introductory text of paragraph (b) by removing ''8.001'' and adding ''8.002'' in its place.

PART 16—TYPES OF CONTRACTS

11. Amend section 16.505 as follows:

a. Revise paragraph (a)(2);

b. In paragraph (a)(3) by adding ''or order'' after the word ''contract'';

c. Redesignate paragraphs (a)(4), (a)(5), and (a)(6) as (a)(5), (a)(6), and (a)(8), respectively, and add new paragraphs (a)(4) and (a)(7);

d. Add paragraphs (b)(1)(iii)(A)(*4*) and (b)(1)(iii)(A)(*5*);

e. Revise the introductory text of paragraph (b)(2);

f. Amend paragraphs (b)(2)(i) and (b)(2)(ii) by removing the semicolons and adding periods in their places;

g. Revise paragraph (b)(2)(iii);

h. Revise paragraph (b)(4); and

i. Revise the heading and the first sentence of paragraph (b)(5).

The revised and added text reads as follows:

16.505 Ordering.

(a) * * *

(2) Individual orders shall clearly describe all services to be performed or supplies to be delivered so the full cost or price for the performance of the work can be established when the order is placed. Orders shall be within the scope, issued within the period of performance, and be within the maximum value of the contract.

* * * * *

(4) When acquiring information technology and related services, consider the use of modular contracting to reduce program risk (see 39.103(a)).

* * * * *

(7) Orders placed under a task-order contract or delivery-order contract awarded by another agency (*i.e.*, a Governmentwide acquisition contract, or multi-agency contract)—

(i) Are not exempt from the development of acquisition plans (see subpart 7.1), and an information technology acquisition strategy (see part 39); and

(ii) May not be used to circumvent conditions and limitations imposed on the use of funds (*e.g.*, 31 U.S.C. 1501(a)(1)).

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(A) * * *

(*4*) The amount of time contractors need to make informed business decisions on whether to respond to potential orders.

(*5*) Whether contractors could be encouraged to respond to potential orders by outreach efforts to promote exchanges of information, such as—

(*i*) Seeking comments from two or more contractors on draft statements of work;

(*ii*) Using a multiphased approach when effort required to respond to a potential order may be resource intensive (*e.g.*, requirements are complex or need continued development), where all contractors are initially considered on price considerations (*e.g.*, rough estimates), and other considerations as appropriate (*e.g.*, proposed conceptual approach, past performance). The contractors most likely to submit the highest value solutions are then selected for one-on-one sessions with the Government to increase their understanding of the requirements, provide suggestions for refining requirements, and discuss risk reduction measures.

* * * * *

(2) *Exceptions to the fair opportunity process.* The contracting officer shall give every awardee a fair opportunity to be considered for a delivery-order or task-order exceeding $2,500 unless one

of the following statutory exceptions applies:

* * * * *

(iii) The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.

* * * * *

(4) *Decision documentation for orders.* The contracting officer shall document in the contract file the rationale for placement and price of each order, including the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision. This documentation need not quantify the tradeoffs that led to the decision. The contract file shall also identify the basis for using an exception to the fair opportunity process. If the agency uses the logical follow-on exception, the rationale shall describe why the relationship between the initial order and the follow-on is logical (*e.g.*, in terms of scope, period of performance, or value).

(5) *Task-order and delivery-order ombudsman.* The head of the agency shall designate a task-order and delivery-order ombudsman. * * *

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

12. Revise paragraph (b) of section 17.500 to read as follows:

17.500 Scope of subpart.

* * * * *

(b) The Economy Act applies when more specific statutory authority does not exist. Examples of interagency acquisitions to which the Economy Act does not apply include—

(1) Acquisitions from required or optional sources of supplies prescribed in Part 8, which have separate statutory authority (*e.g.*, Federal Supply Schedule contracts); and

(2) Acquisitions using Governmentwide acquisition contracts.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.208–9 [Amended]

13. Amend section 52.208–9 by removing from the prescription ''8.003'' and adding ''8.004'' in its place.

[FR Doc. 02–21867 Filed 8–29–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 12, 13, 19, and 25

[FAC 2001–09; FAR Case 2002–003; Item II]

RIN 9000–AJ40

Federal Acquisition Regulation; Temporary Emergency Procurement Authority

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 836 of the Fiscal Year 2002 National Defense Authorization Act. Section 836 increases the amount of the micro-purchase threshold and the simplified acquisition threshold for procurements of supplies or services by or for DoD during fiscal years 2002 and 2003, where those procurements are to facilitate the defense against terrorism or biological or chemical attack against the United States.

DATES: *Effective Date:* August 30, 2002.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before October 29, 2002, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2002–003@gsa.gov*

Please submit comments only and cite FAC 2001–09, FAR case 2002–003, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 2001–09, FAR case 2002–003.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Section 836 of the Fiscal Year 2002 National Defense Authorization Act (Pub. L. 107–107, 10 U.S.C. 2302 Note). Section 836 increases the amount of the micro-purchase threshold and the simplified acquisition threshold for procurements of supplies or services by or for DoD during fiscal years 2002 and 2003, where those procurements are to facilitate the defense against terrorism or biological or chemical attack against the United States.

For acquisitions of supplies and services to facilitate the defense against terrorism or biological or chemical attack against the United States, by or for the Department of Defense, the micro-purchase threshold is raised to $15,000 (except for construction subject to the Davis-Bacon Act). The simplified acquisition threshold for such acquisitions in support of a contingency operation is raised to $250,000 inside the United States and $500,000 outside the United States.

Any acquisition by or for the Department of Defense of biotechnology supplies or biotechnology services to facilitate the defense against terrorism or biological or chemical attack against the United States shall be treated as being a procurement of commercial items.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* However, the increased thresholds are limited to procurements that are to facilitate the defense against terrorism or biological or chemical attack against the United States. There are no data available on the number of procurements that will be eligible. We expect the increased thresholds to this limited class of procurements will apply to a very small number of small entities.

This interim rule does not impose any data collection requirements on small business concerns. The rule does not duplicate, overlap, or conflict with other relevant Federal rules. There are no significant alternatives to the proposed rule that would accomplish the stated beneficial objective.

The FAR Secretariat has submitted a copy of the Initial Regulatory Flexibility

Analysis to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2001–09, FAR case 2002–003), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the FAR coverage implements Section 836 of the Fiscal Year 2002 National Defense Authorization Act, signed on December 28, 2001, which provides for urgently needed authorities.

However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 2, 12, 13, 19, and 25

Government procurement.

Dated: August 21, 2002.

AL Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 12, 13, 19, and 25 as set forth below:

1. The authority citation for 48 CFR parts 2, 12, 13, 19, and 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by revising the definitions ''Micro-purchase'', ''Micro-purchase threshold'', and ''Simplified acquisition threshold'' to read as follows:

2.101 Definitions.

* * * * *

Micro-purchase means an acquisition of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold.

Micro-purchase threshold means $2,500, except it means—

(1) $2,000 for construction subject to the Davis-Bacon Act; and

(2) $15,000 for acquisitions by or for the Department of Defense facilitating the defense against terrorism or biological or chemical attack as described in 13.201(g), except for construction subject to the Davis-Bacon Act.

* * * * *

Simplified acquisition threshold means $100,000, except that in the case of any contract to be awarded and performed, or purchase to be made—

(1) Outside the United States in support of a contingency operation (as defined in 10 U.S.C. 101(a)(13)) or a humanitarian or peacekeeping operation (as defined in 10 U.S.C. 2302(8) and 41 U.S.C. 259(d)), the term means $200,000; or

(2) To facilitate the defense against terrorism or biological or chemical attack against the United States, for acquisitions—

(i) Inside the United States, by or for the Department of Defense, for which award is made and funds are obligated on or before September 30, 2003, in support of a contingency operation (as defined in 10 U.S.C. 101(a)(13)), the term means $250,000; or

(ii) Outside the United States, by or for the Department of Defense, for which award is made and funds are obligated on or before September 30, 2003, in support of a contingency operation (as defined in 10 U.S.C. 101(a)(13)), the term means $500,000.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. Amend section 12.102 by adding paragraph (f) to read as follows:

12.102 Applicability.

* * * * *

(f) Contracting officers shall treat any acquisition by or for the Department of Defense of biotechnology supplies or biotechnology services, for use to facilitate the defense against terrorism or biological attack against the United States, as an acquisition of commercial items. The policies of this part shall apply to such acquisitions, including the requirement to use firm-fixed price contracts or fixed-price contracts with economic price adjustments. Nothing in this paragraph shall preclude a contracting officer from treating an acquisition described in this paragraph as one for a non-commercial item if a determination is made by the contracting officer that the purchase cannot be made at a fair and reasonable price using the policies of this part. This paragraph applies only when award is made and funds are obligated on or before September 30, 2003.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.003 [Amended]

4. Amend section 13.003 in paragraph (b)(1) by adding ''($15,000 for acquisitions as described in 13.201(g))'' after ''$2,500''; and in paragraph (b)(2) by removing ''$2,500'' and adding ''the micro-purchase threshold'' in its place.

5. Amend section 13.201 by adding paragraph (g) to read as follows:

13.201 General.

* * * * *

(g) There is a temporary $15,000 micro-purchase threshold for the acquisition of supplies or services by or for the Department of Defense for which award is made and funds are obligated on or before September 30, 2003, facilitating the defense against terrorism or biological or chemical attack against the United States (see 2.101). Purchases using this authority must have a clear and direct relationship to the defense against terrorism or biological or chemical attack.

PART 19—SMALL BUSINESS PROGRAMS

6. Amend section 19.502–1 by revising paragraph (b) to read as follows:

19.502–1 Requirements for setting aside acquisitions.

* * * * *

(b) This requirement does not apply to purchases of $2,500 or less ($15,000 or less for acquisitions as described in 13.201(g)), or purchases from required sources of supply under part 8 (*e.g.*, Federal Prison Industries, Committee for Purchase From People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts).

19.502–2 [Amended]

7. Amend section 19.502–2 in the first sentence of paragraph (a) by removing ''$2,500,'' and adding ''$2,500 ($15,000 for acquisitions as described in 13.202(g)),'' in its place.

8. Amend section 19.903 by—

a. Removing the word ''or'' from paragraph (b)(1);

b. Removing the period at the end of the sentence in paragraph (b)(2) and adding ''; or'' in its place; and

c. Adding paragraph (b)(3) to read as follows:

19.903 Applicability.

* * * * *

(b) * * *

(3) Acquisitions of $15,000 or less facilitating the defense against terrorism or biological or chemical attack against the United States as described in 13.201(g).

PART 25—FOREIGN ACQUISITION

25.1101 [Amended]

9. Amend section 25.1101 in the introductory text of paragraph (a)(1) by adding ''($15,000 for acquisitions as described in 13.201(g))'' after ''$2,500''.

25.1103 [Amended]

10. Amend section 25.1103 in paragraph (a) by removing ''$2,500,'' and adding ''$2,500 ($15,000 for acquisitions as described in 13.201(g)),'' in its place.

[FR Doc. 02–21868 Filed 8–29–02; 8:45 am]

BILLING CODE 6820–EP–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 5, 7, 19, 52, and 53

[FAC 2001–09; FAR Case 2000–302; Item III]

RIN 9000–AI93

Federal Acquisition Regulation; Veterans Entrepreneurship and Small Business Development Act of 1999

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to adopt, as final, the first interim rule published at 65 FR 60542, October 11, 2000, which implemented portions of the Veterans Entrepreneurship and Small Business Development Act of 1999 which added a subcontracting plan goal for veteran-owned small businesses and a 3 percent Governmentwide agency goal for service-disabled veteran-owned small businesses, and the second interim rule published at 66 FR 53492, October 22, 2001, which implemented Section 803 of the Small Business Reauthorization Act of 2000 (part of the Consolidated Appropriations Act, 2001), which added an additional subcontracting plan goal for service-disabled veteran-owned small business concerns. Both rules, and the correction published January 14, 2002, are adopted as final without change.

DATES: Effective Date: August 30, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. Please cite FAC 2001–09, FAR case 2000–302.

SUPPLEMENTARY INFORMATION:

A. Background

The final rule amends the FAR to implement portions of the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50) and section 803 of the Small Business Reauthorization Act of 2000 (part of the Consolidated Appropriations Act, 2001, Pub. L. 106–554). The Veterans Entrepreneurship and Small Business Development Act of 1999 established new assistance programs for veterans and service-disabled veterans who own and operate small businesses. Specifically, the Act—

- Defines the terms ''small business concern owned and controlled by service-disabled veterans''; and ''small business concern owned and controlled by service-disabled veterans'';
- Establishes that veteran-owned and service-disabled veteran-owned small businesses be afforded maximum practical opportunity to participate in the performance of contracts and subcontracts awarded by any Federal agency;
- Establishes a requirement to include a goal for veteran-owned small businesses in subcontracting plans under the clause at 52.219–9;
- Establishes a 3 percent Governmentwide goal (based on the total value of all prime contract and subcontract awards) for participation by service-disabled veteran-owned small businesses; and
- Adds data collection requirements for prime and subcontract awards to veteran-owned small businesses and service disabled veteran-owned small business concerns.

DoD, GSA, and NASA published in the **Federal Register** two interim rules (65 FR 60542, October 11, 2000 (FAC 97–20) and 66 FR 53492, October 22, 2001 (FAC 2001–01), respectively); and a correction to the second interim rule (67 FR 1858, January 14, 2002 (FAC 2001–01 Correction)), to implement the statutes.

Four respondents submitted comments in response to the interim rule. The Councils considered all comments and made no changes as a result. However, three of the comments merit noting. The first comment was that the interim rule, as published on October 11, 2001, is flawed as 19.704(a)(1) and the clause at 52.219–9(d)(1) still contain the phrase ''a separate goal for service-disabled veteran-owned small business concerns is not required.'' *Response:* The appearance of that phrase in the **Federal Register** was an error and was subsequently corrected by the January 14, 2002, **Federal Register** notice.

The second comment consists of several suggestions of policy steps that should be taken to implement the legislation. *Response:* The comment is outside the scope of the case, as it does not address any existing or proposed FAR coverage.

The third comment suggests that the rule be modified to provide service-disabled veteran-owned small business concerns ''the benefit of every contracting preference afforded SDBs and women-owned small businesses * * *''. The comment also suggests limiting of competition for certain commodities or service that may be furnished by service-disabled veteran-owned small business concerns. *Response:* Existing legislation does not permit adopting any of the suggestions contained in the comment.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule adds a new statutory subcontracting plan goal requirement for service-disabled veteran-owned small business concerns. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and is summarized as follows:

This final rule revises the Federal Acquisition Regulation to implement

portions of the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50) and section 803 of the Small Business Reauthorization Act of 2000, part of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554). The statutes added a separate subcontracting plan goal requirement for veteran-owned small business and another goal for service-disabled veteran-owned small business concerns. There are approximately 4 to 5.5 million small businesses owned and controlled by veterans and 100,000 to 300,000 small businesses owned and controlled by service-disabled veterans. This rule does not duplicate, overlap, or conflict with other relevant Federal regulations. There are no alternatives to the final rule that would accomplish the stated objectives.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 4, 5, 7, 19, 52, and 53 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2001–09, FAR case 2000–302), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104–13) applies. However, this final rule requires contractors to report, as a separate item, information already collected and reported under OMB Control Numbers 9000–0006 and 9000–0007. The impact of this final rule on the information collection hours of these OMB clearances is so small as to be within the estimating parameters of these clearances. Therefore, the clearances have not been changed.

List of Subjects in 48 CFR Parts 2, 4, 5, 7, 19, 52, and 53

Government procurement.

Dated: August 21, 2002.

Al Matera,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

Accordingly, DoD, GSA, and NASA adopt the interim rules and correction amending 48 CFR parts 2, 4, 5, 7, 19, 52, and 53, which were published in the **Federal Register** at 65 FR 60542, October 11, 2000, the second interim rule at 66 FR 53492, October 22, 2001, and the correction to the second interim rule at 67 FR 1858, January 14, 2002, as a final rule without change.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 02–21869 Filed 8–29–02; 8:45 am]

BILLING CODE 6820–EP–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2001–09; FAR Case 2002–009; Item IV]

RIN 9000–AJ41

Federal Acquisition Regulation; Trade Agreements Thresholds

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement new dollar thresholds for application of the Trade Agreements Act (TAA) and North American Free Trade Agreement (NAFTA) as published by the U.S. Trade Representative in the **Federal Register** at 67 FR 14763, March 27, 2002.

DATES: Effective Date: September 30, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–09, FAR case 2002–009.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Subparts 22.15, 25.2, 25.4, 25.6, and 25.11 to implement new dollar thresholds for application of the Trade Agreements Act (TAA) and North American Free Trade Agreement (NAFTA), as published by the U.S. Trade Representative in the **Federal Register** at 67 FR 14763, March 27, 2002.

The rule also amends the clauses at 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items), and 52.222–19, Child Labor—Cooperation with Authorities and Remedies.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 22, 25, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001–09, FAR case 2002–009), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers 9000–0023, 9000–0025, 9000–0130, and 9000–0141.

List of Subjects in 48 CFR Parts 22, 25, and 52

Government procurement.

Dated: August 21, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 22, 25, and 52 as set forth below:

1. The authority citation for 48 CFR parts 22, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS 22.1503 [Amended]

2. Amend section 22.1503 in paragraph (b)(3) by removing ''$54,372'' and adding ''$56,190'' in its place; and by removing from paragraph (b)(4) ''$177,000'' and adding ''$169,000'' in its place.

PART 25—FOREIGN ACQUISITION

25.202 [Amended]

3. Amend section 25.202 in paragraph (c) by removing ''$6,806,000'' and ''$7,068,419'' and adding ''$6,481,000'' and ''$7,304,733'' in their place, respectively.

25.403 [Amended]

4. Amend section 25.403 in paragraph (b)(1) by removing ''$177,000'' and ''$6,806,000'' and adding ''$169,000'' and ''$6,481,000'' in their place, respectively.

25.405 [Amended]

5. Amend section 25.405 as follows:

a. In paragraph (a) by removing ''$25,000 or less'' and ''$54,372'' and adding ''less than $25,000'' and ''$56,190'' in their place, respectively;

b. In paragraph (b) by removing ''$7,068,419'' and adding ''7,304,733'' in its place; and

c. In paragraph (c) by removing ''$54,372'' and $7,068,419'' and adding ''$56,190'' and ''$7,304,733'' in their place, respectively.

25.601 [Amended]

6. Amend section 25.601 as follows:

a. In the introductory text of paragraph (a) by removing ''must'' and adding ''shall'' in its place;

b. In paragraphs (a)(1) and (a)(3)(ii) by removing ''$177,000'' and adding ''$169,000'' in their places; and

c. In paragraph (a)(2) by removing ''$6,806,000'' and adding ''$6,481,000'' in its place.

7. Amend section 25.1101 as follows:

a. Revise paragraphs (b)(1)(i)(A), (b)(1)(ii), (b)(1)(iii), (b)(2)(ii), and (b)(2)(iii); and

b. In paragraphs (c)(1) and (d) by removing ''$177,000'' and adding ''$169,000'' in their place.

The revised text reads as follows:

25.1101 Acquisition of supplies.

* * * * *

(b)(1)(i) * * *

(A) The acquisition is for supplies, or for services involving the furnishing of supplies, for use within the United States, and the acquisition value is $25,000 or more, but is less than $169,000; and

* * * * *

(ii) If the acquisition value is $25,000 or more but is less than $50,000, use the clause with its Alternate I.

(iii) If the acquisition value is $50,000 or more but is less than $56,190, use the clause with its Alternate II.

(2) * * *

(ii) If the acquisition value is $25,000 or more but is less than $50,000, use the provision with its Alternate I.

(iii) If the acquisition value is $50,000 or more but is less than $56,190, use the provision with its Alternate II.

* * * * *

25.1102 [Amended]

8. Amend section 25.1102 as follows:

a. In the introductory text of paragraphs (a) and (c), and paragraphs (c)(3) and (d)(3) by removing ''$6,806,000'' and adding ''$6,481,000'' in their place; and

b. In paragraphs (c)(3) and (d)(3) by removing ''$7,068,419'' and adding ''$7,304,733'' in their place.

25.1103 [Amended]

9. Amend section 25.1103 in paragraphs (c)(1)(i) and (c)(1)(ii)(B) by removing ''$177,000'' and adding ''$169,000'' in their place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Amend section 52.213–4 as follows:

a. Revise the date of the clause; and

b. Remove paragraph (b)(1)(vi) and redesignate paragraphs (b)(1)(i) through (b)(1)(v) as (b)(1)(ii) through (b)(1)(vi), respectively; and add a newly designated paragraph (b)(1)(i) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Sept 2002)

* * * * *

(b) * * *

(1) * * *

(i) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (Sept 2002) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

* * * * *

52.222–19 [Amended]

11. Amend section 52.222–19 by revising the date of the clause to read (SEPT 2002); in paragraph (a)(3) by removing ''$54,372'' and adding ''$56,190'' in its place; and in paragraph (a)(4) by removing ''$177,000'' and adding ''$169,000'' in its place.

[FR Doc. 02–21870 Filed 8–29–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2001–09; FAR Case 2001–012; Item V]

RIN 9000–AJ22

Federal Acquisition Regulation; Payments Under Fixed-Price Construction Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify in the certification language of the clause entitled Payments Under Fixed-Price Construction Contracts that all payments due to subcontractors and suppliers have been made by the prime contractor from previous progress payments received from the Government.

DATES: *Effective Date:* September 30, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAC 2001–09, FAR case 2001–012.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 66 FR 53050, October 18, 2001, with request for comments. Six respondents submitted public comments. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule, with no changes made to the proposed rule.

The rule revises FAR 52.232–5, Payments Under Fixed-Price Construction Contracts, to clarify the certification language. The ambiguity surfaced as a result of a decision issued on April 2, 1999, by the United States Court of Appeals for the Sixth Circuit in *United States* v. *Gatewood*, 173 F.3d 983 (6th Cir. 1999). The Court concluded that certifying that the prime contractor has made payments to subcontractors and suppliers does not explicitly include *all* payments due.

Of the six respondents who submitted public comments, two endorsed the proposed rule as written. The remaining respondents provided comments, which are discussed below:

1. One of the respondents asserted that some of its customers ''that do not pay their invoices on time use the rationale of this FAR regulation to respond to us that it is not necessary to pay us until they themselves are paid by the Federal Government.'' The respondent requested that the Government close ''a loophole'' for billion dollar companies to avoid paying their smaller vendors.

Response: It has always been the Government's intent that subcontractors be paid all that they are due on a timely basis, in accordance with the terms of their subcontract agreements with their prime contractors. Because of the decision in *United States* v. *Gatewood*, it is necessary to make that point with greater clarity by inserting the word ''all,'' thus ensuring that the prime contractor has made all payments due its subcontractors that have been included in its progress payments billings. The FAR change is designed to better ensure that subcontractors are paid on a timely basis, thus addressing the respondent's request that a ''loophole'' be closed. The final rule would prevent construction prime contractors from making only partial payments to subcontractors, based on a very narrow reading of the current language of FAR 52.232–5(c)(2).

2. A second respondent suggested a slight rewording of the proposed change to FAR 52.232–5(c)(2), to better address not only the requirement for the prime contractor to have made previous payments in a timely manner, but that it make current payments in a timely manner as well. The wording suggested is as follows:

''All payments due to subcontractors and suppliers from previous payments received under the contract have been made in a timely manner; and all payments due to subcontractors and suppliers from the proceeds of the payment covered by this certification will be made timely, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code * * *.''

Response: The Councils concluded that the rewording of the proposed rule recommended by respondent #2 is not necessary. The proposed rule states that ''timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code.'' Consequently, if the prime contractor elects to make only a part of the payments due to subcontractors from the proceeds of the progress payment, the prime contractor would be making some of its payments on an untimely basis, and as such, the prime contractor will have made a false certification. Under the language of the clause, payments due in accordance with the terms of subcontract agreements and the law must be made on a timely basis if they are to be included in the prime contractor's payment request.

3. A third respondent suggested alternative language to paragraph (c)(2) of the FAR clause at FAR 52.232–5. The respondent's rationale was that the clause should specifically indicate that the prime contractor's certification covers payments due for both work completed and supplies or services delivered by the subcontractors. Respondent #3 asserted that prime contractors do not have to pay their subcontractors for supplies or services delivered unless and until those supplies or services have been incorporated into the scope of work. Consequently, the respondent wanted to specifically indicate that the payments covered by the certified payment request include payments to subcontractors for materials and services that may not have been incorporated into the scope of the prime contract at the time the prime contractor's payment request is made to the Government. The wording suggested by the respondent is as follows:

''(2) All payments due to subcontractors and suppliers for work completed or materials/equipment delivered have been made from previous payments under this contract and timely payments will be made from payments due for which this certification and the attached invoice is submitted. This requirement supercedes any other payment terms that may have been included in any subcontract terms and is required by chapter 39 of Title 31, United States Code.''

Response: The Councils concluded that the language suggested by respondent #3 is not needed and may lead to confusion with regard to the requirements of the entire payment clause at FAR 52.232–5. FAR 52.232–5(b)(1) requires that the prime contractor's progress payment request include a listing of the amount included for work performed by each subcontractor under the contract; a listing of the total amount of each subcontract under the contract; and a listing of amounts previously paid to each subcontractor. The clause also clearly indicates in 52.232–5(c)(1) that the contractor's certified payment request is for amounts ''only for performance in accordance with the specifications, terms, and conditions of the contract.''

It is not the intent of this clause to enable the billing of progress payments for materials and services that may not have been incorporated into the scope of work of the contract. It is conceivable that a construction prime contractor may have purchased building materials from a single vendor sufficient to support not only the construction project under the Government's contract, but also on other jobs as well. However, the prime contractor can only bill for the materials used on the subject Government contract, once it has been determined what portion of those materials will be used to perform the Government contract. The fact that the prime contractor may not have paid the subcontractor for materials as yet unidentifiable to the Government contract may be a matter of general concern to the contracting officer, but it does not have a bearing on progress payment billings under a specific Government contract until after the material has been identified as part of the scope of work of that contract.

4. The fourth respondent asserted that, because the payments made under construction prime contracts are almost always covered by payment bonds or alternate payment procedures, the Government should not be involved in payment disputes between prime contractors and subcontractors. Consequently, respondent #4 concluded that the prime contractor's certification that payments have been made to its subcontractors was redundant and unnecessary, and that the certification should be eliminated. Respondent #4 also indicated that contracting officer inquiries as to whether a subcontractor has been paid on time were usually a reflection of a situation where the subcontractor has not been paid because of a dispute over subcontractor performance. Consequently, respondent #4 believed the following language was sufficient:

''(2) All past and future payments due to subcontractors and suppliers will be or have been made as required by chapter 39 of Title 31, United States Code.''

Response: The Councils concluded that adopting respondent #4's proposed alternative language could be seen as a significant weakening of the payment protections afforded to construction subcontractors by Government contracts. The certification requirement questioned by respondent #4 is provided for in chapter 39 of Title 31 of the U.S.C. The certification is needed in the event the prime contractor has fraudulently billed the Government for progress payments that the prime contractor has represented will be used to pay its subcontractors; as such, this certification supports the possibility that the Government may need to prosecute the prime contractor under laws relating to defrauding the Government. Absent a certification, and employing only the words proposed by respondent #4, the Government could assert that the prime contractor had breached its contract if it failed to pay its subcontractors with the proceeds

from progress payments paid to the prime contractor for that purpose. But that is well short of the enforcement action potentially available under the fraud statute.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities have a dollar value less than the simplified acquisition threshold and, therefore, do not have the progress payment type of financing. In addition, this change is a clarification of existing policy, rather than the addition of new policy.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: August 21, 2002

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 52.232–5 by revising the date of the clause and paragraph (c)(2) to read as follows:

52.232–5 Payments Under FixedúPrice Construction Contracts.

* * * * *

Payments Under Fixed—Price Construction Contracts (Sept. 2002)

* * * * *

(c) * * *

(2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;

* * * * *

[FR Doc. 02–21871 Filed 8–29–02; 8:45 am]

BILLING CODE 6820–EP–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 36, and 52

[FAC 2001–09; Item VI]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

DATES: Effective Date: September 30, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755. Please cite FAC 2001–09, Technical Amendments.

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: August 21, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 22, 36, and 52 as set forth below:

1. The authority citation for 48 CFR parts 22, 36, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1503 [Amended]

2. Amend section 22.1503 in the first sentence of paragraph (a) by removing ''(*www.dol.gov/dol/ilab*)'' and adding ''(*www.dol.gov/ilab/*)'' in its place.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.606 [Amended]

3. Amend section 36.606 in the last sentence of paragraph (a) by removing from the parenthetical the words ''and the determination and findings requirement at 16.306(c)(2) for a cost-plus-fixed-fee contract''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.232–16 by correcting Alternate III of the clause to read as follows:

52.232–16 Progress Payments.

* * * * *

Alternate III (Feb 2002). As prescribed in 32.502–4(d), add the following paragraph (m) to the basic clause. If Alternate II is also being used, redesignate the following paragraph as paragraph (o):

(m) The provisions of this clause will not be applicable to individual orders at or below the simplified acquisition threshold.

[FR Doc. 02–21872 Filed 8–29–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001-09 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001–09 which precedes this document.

These documents are also available via the Internet at *http://www.arnet.gov/far*.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001–09

Item	Subject	FAR case	Analyst
I	Task-Order and Delivery-Order Contracts	1999–303	Wise.
II	Temporary Emergency Procurement Authority (Interim)	2002–003	Moss.
III	Veterans Entrepreneurship and Small Business Development Act of 1999	2000–302	Cundiff.
IV	Trade Agreements Thresholds	2002–009	Davis.
V	Payments Under Fixed-Price Construction Contracts	2001–012	Olson.
VI	Technical Amendments		

Item I—Task-Order and Delivery-Order Contracts (FAR Case 1999–303)

This final rule amends the Federal Acquisition Regulation (FAR) to further implement subsections 804(a) and (b) of the National Defense Authorization Act for Fiscal Year 2000 concerning task-order and delivery-order contracts.

With respect to acquisition planning, the rule draws greater attention to the capital planning requirements of the Clinger-Cohen Act (40 U.S.C. 1422) and ensures more deliberation by agency acquisition planners before orders are placed under a Federal Supply Schedule contract, or task-order contract or delivery-order contract awarded by another agency (*i.e.*, Governmentwide acquisition contract or multi-agency contract).

With respect to the structuring of orders and the consideration given to contract holders prior to order placement, the rule (1) increases attention to modular contracting principles to help agencies avoid unnecessarily large and inadequately defined orders, (2) facilitates information exchange during the fair opportunity process so that contractors may develop and propose solutions that enable the Government to award performance-based orders, and (3) revises existing documentation requirements to address tradeoff decisions as well as the issuance of sole-source orders as logical follow-ons to orders already issued under the contract. This rule also adds a separate definition for the terms ''Governmentwide acquisition contract (GWAC)'' and ''Multi-agency contract (MAC)'' to the FAR to clarify the difference between the terms and the purpose of each contract vehicle.

Item II—Temporary Emergency Procurement Authority (FAR Case 2002–003)

This interim rule implements Section 836 of the Fiscal Year 2002 National Defense Authorization Act which increases the amount of the micro-purchase threshold and the simplified acquisition threshold for procurements of supplies or services by or for DoD during fiscal years 2002 and 2003, where those procurements are to facilitate the defense against terrorism or biological or chemical attack against the United States. Also, contracting officers acquiring biotechnology supplies or biotechnology services, for use to facilitate the defense against terrorism or biological or chemical attack against the United States, may treat the supplies or services as commercial items.

Item III—Veterans Entrepreneurship and Small Business Development Act of 1999 (FAR Case 2000–302)

This final rule finalizes two interim rules published previously at 65 FR 60542, October 11, 2000 (FAC 97–20), and 66 FR 53492, October 22, 2001 (FAC 2001–01), respectively. The first interim rule implemented portions of the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50), which added a subcontracting plan goal for veteran-owned small businesses and a 3 percent Governmentwide agency goal for service-disabled veteran-owned small businesses. The second interim rule implemented Section 803 of the Small Business Reauthorization Act of 2000 (part of the Consolidated Appropriations Act, 2001, Pub. L. 106–554), which added an additional subcontracting plan goal for service-disabled veteran-owned small business concerns. Both rules, and the correction published at 67 FR 1858, January 14, 2002 (FAC 2001–01 Correction), are adopted as final without change.

Item IV—Trade Agreements Thresholds (FAR Case 2002–009)

This final rule amends FAR Subparts 22.15, 25.2, 25.4, 25.6, 25.11, and the clauses at 52.213–4 and 52.222–19 to implement new dollar thresholds for application of the Trade Agreements Act and North American Free Trade Agreement as published by the U.S. Trade Representative in the **Federal Register** at 67 FR 14763, March 27, 2002. Contracting officers must review the new thresholds when acquiring supplies, services, or construction in order to select the appropriate clauses to implement the Buy American Act, trade agreements, and sanctions of European Union country end products and services.

Item V—Payments Under Fixed-Price Construction Contracts (FAR Case 2001–012)

This final rule amends the FAR to clarify in the certification language of the clause entitled Payments Under Fixed-Price Construction Contracts that all payments due to subcontractors and suppliers have been made by the prime contractor from previous progress payments received from the Government. The rule is of special interest to contracting officers that administer construction contracts.

Item VI—Technical Amendments

These amendments update sections and make editorial changes at FAR 22.1503, 36.606, and 52.232–16.

Dated: August 21, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–21873 Filed 8–29–02; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Friday,
August 30, 2002

Part VI

Federal Emergency Management Agency

44 CFR Parts 206 and 207
Management Costs; Proposed Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 206 and 207

RIN 3067–AD29

Management Costs

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This rule implements the management costs provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), simplifies and clarifies the method by which FEMA contributes to costs incurred by grantees and subgrantees in implementing the Public Assistance and Hazard Mitigation Grant programs, and establishes fixed management cost rates for compensating eligible grantees and subgrantees while adequately protecting Federal financial interests.

DATES: We invite comments on this proposed rule. Please submit written comments on or before September 30, 2002.

ADDRESSES: Please address all comments to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, room 840, 500 C Street, SW., Washington, DC 20472, or (facsimile) (202) 646–4536 or (e-mail) *rules@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Veandeen H. Pace, Financial and Acquisition Management Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, 202–646–3256, (facsimile) (202) 646–3846, or (e-mail) *veandeen.pace@fema.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

Section 324 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5165b,[1] requires FEMA: (1) To establish management cost rates for grantees and subgrantees that will be used to determine contributions for management costs; and (2) to review the management cost rates established not later than three years after the date of establishment of the rates and periodically thereafter.

The Management Cost Rate will replace what we currently pay State and local governments through the ''sliding scale'' under section 406(f) of the Stafford Act, State Management Costs, and indirect costs that are paid in accordance with 44 CFR 206.228(a)(2) through 206.228(a)(3)(ii) and §206.228(b) for Public Assistance (PA), and 44 CFR 206.439(b)(1) through (c)(2) for the Hazard Mitigation Grant Program (HMGP). Management costs include any direct or indirect cost, any administrative expense, and any other expense not directly chargeable to a specific project for PA and HMGP.

Any costs that can be directly attributable to a project (at the grantee or subgrantee levels) will continue to be added directly to the PA Project Worksheet (PW) or HMGP application for the project.

In the proposed rule, we state that management costs as outlined will be effective to apply to major disasters and emergencies declared on or after October 1, 2002. We anticipate implementing management costs on October 1, 2002; however, this date may change as the implementation process progresses. We invite comments from the public on the proposed implementation date.

Because management costs are authorized by a section separate from those authorizing PA and HMGP, we propose to implement section 324 separately from those two programs.

Calculation of Management Costs

We propose to use the ''lock-in'' concept to determine the amount of funds that we will make available to a State for management costs for a particular major disaster or emergency. We will base the lock-in on a flat percentage of the Federal share for the combined programs (PA and HMGP); the percentage will be equivalent to the average percentage amount paid by FEMA to grantees and subgrantees for those programs for management and administrative costs, including indirect costs, for major disaster and emergency declarations from 1995 through 2000.

To determine the percentage to be used for management costs, we collected data on management, administrative, and indirect costs from our Automated Disaster Assistance Management System, National Emergency Management Information System, Hazard Mitigation Historical Database, Integrated Financial Management Information System, and Disaster Financial Status Report. These systems and reports contain the accounting and financial data for FEMA and we believe it is logical to use these data types and sources when calculating the management cost rates.

We compiled raw data on actual obligations for PA and HMGP (total program obligations); administrative costs (''sliding scale''); and management costs, including indirect costs, for major disasters and emergencies declared 1995–2000. The data were as of September 30, 2000 and represented what grantees and subgrantees received in total administrative costs. The raw data were then sorted various ways to determine whether trends existed. Among the data sorts we conducted were by type of declaration (major disaster or emergency), type of disaster, size of disaster, State, area or region of country, and number of declarations within the State. The data, when sorted, generally did not demonstrate any clear trends to support a multi-tiered rate structure. However, because on average management and administrative costs for emergency declarations were substantially less than for major disasters, we believe the data support having different rates for major disaster and emergency declarations.

Although we considered the feasibility of providing different management cost rates to States that participate in either the HMGP as a Managing State or in PA as a State managing a small disaster, we do not have any information at this time to support different rates for those initiatives. We encourage States that participate in either of these initiatives to document extraordinary management costs for our use in the required review of the rates.

FEMA contracted with a managerial cost accounting firm to validate our methodology for calculating the management cost rates. The firm reported to us at the conclusion of its review that the methodology used to set the rates was both reasonable and correct, and that we fairly assessed other possible alternatives in coming to our conclusions.

In the proposed rule, we state that the rate on or after October 1, 2002 will be 4.41% for major disaster declarations and 3.16% for emergency declarations. We invite comments from the public on the rates and the calculation.

Not earlier than 30 days from the date of declaration, we propose to provide the State a preliminary lock-in amount for management costs based on the combined estimated projections at that time of the Federal share for PA and HMGP. At the time of the preliminary lock-in, we will obligate up to 25 percent of the estimated lock-in amount to States through an obligation separate from the obligations for PA and HMGP.

To aid States in planning, we will revise the lock-in amount at six months after the date of the declaration. We will determine the final lock-in amount after the final HMGP lock-in amount is determined. At that time, we will

[1] Enacted in the Disaster Mitigation Act of 2000, Pub. L. 106–390, § 202.

obligate the full amount of management costs to the State.

The dollar amount provided to a State for management costs for a single declaration will not exceed $20,000,000. The grantee must justify in writing to the FEMA Regional Director (RD) any requests to change the amount of the lock-in or the cap, or extend the time before lock-in. The RD will recommend to the FEMA Chief Financial Officer (CFO) whether to approve the extension or change. We may also initiate such changes. We will not make extensions or changes to lock-in time or amounts without approval of the CFO.

Eligible Use of Funds

Because grantees have the primary relationship with their subgrantees, States are responsible for passing through to their subgrantees a portion of the management cost funds that FEMA provides. States will have the flexibility to determine the amount of management costs funding used for each program (PA and HMGP) and passed through to their subgrantees under the two programs for their administrative costs. States will be responsible for managing the funds in order to ensure that the programs can be properly implemented and closed out in a timely manner.

We may allow the grantee or subgrantee to retain any management cost funds not needed for a particular major disaster or emergency so long as the grantee or subgrantee uses the remaining funds to cover costs associated with disaster programs' general financial and grants management enhancements. Remaining funds may not be used for disaster-specific PA and HMGP management for any declarations other than the major disaster or emergency for which FEMA provided them.

The grantee must submit a plan in writing to the FEMA Regional Director after the PA and HMGP grants are closed describing how it proposes to spend any remaining funds. The Regional Director will recommend to the FEMA Chief Financial Officer whether to approve the plan. Examples of allowable charges include grants management training, financial systems improvements, and accounting enhancements. Grantees must spend all such funds in compliance with 44 CFR 13.22.

The State must spend management cost funds, including approved remaining funds, within six years from date of major disaster or emergency declaration, or by 90 days after grant closeout, whichever is sooner. This may only be extended at the request of the State, with the recommendation of the FEMA Regional Director, and with the approval of the FEMA Chief Financial Officer.

Disasters Declared Prior to Implementation of Management Costs

Associated expenses (administrative costs commonly known as costs paid through the ''sliding scale'') and State management costs paid in accordance with 44 CFR 13.22 will continue to be eligible for reimbursement for major disasters or emergencies declared before the effective date of this rule. We will reimburse such eligible costs for a maximum of six years from the date of the major disaster or emergency declaration. We will only extend payment of these costs at the written request of the State justifying the extension, with the recommendation of the FEMA Regional Director, and with the approval of the FEMA Chief Financial Officer.

National Environmental Policy Act (NEPA)

44 CFR 10.8(d)(2)(ii) excludes this rule from the preparation of an environmental assessment or environmental impact statement, where the rule relates to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(i), such as the provision of management costs. We have not prepared an environmental assessment or environmental impact statement for this proposed rule.

Paperwork Reduction Act of 1995

FEMA has determined that the implementation of management costs is subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. As required by the Paperwork Reduction Act of 1995 and concurrent with this proposed rule, we have submitted a request for Office of Management and Budget (OMB) review and approval of a new collection of information, which is contained in this proposed rule. This request for collection of information and notice for comment will be processed under OMB's clearance procedures in accordance with 5 CFR 1320.10 and complies with provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). We invite the general public to comment on the collection of information.

Collection of Information

Title: Management Costs.

Type of Information Collection: New.

OMB Number: New OMB number 3067–XXXX.

Form Numbers: SF 424, Application for Federal Assistance; FEMA Form 20–10, Financial Status Report; FEMA Form 20–16, Summary Sheet for Assurances and Certifications; FEMA Form 20–16A, Assurances '' Non-Construction Programs; FEMA Form 20–16C, Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements; FEMA Form 20–20, Budget Information—Non-Construction Programs; and SF LLL, Disclosure of Lobbying Activities.

Abstract: This collection is in accordance with our responsibilities under 44 CFR part 207 to provide an orderly and continuing means of assistance by the Federal Government to State and local governments. The assistance contributes funds toward the cost of managing and administering public assistance and hazard mitigation grant programs provided as a result of a Presidential major disaster or emergency declaration.

Affected Public: State and Indian tribal governments.

Estimated Total Annual Burden Hours: 3555.3 hours. A breakdown of the burden is charted below:

FEMA Forms	No. of respondents (A)	Frequency of response (B)	Hours per response and recordkeeping (C)	Annual burden hours (A×B×C)
SF–424: Application for Federal Assistance	56	2	45 minutes	84
FEMA Form 20–16: Financial Status Report	56	4	1 hour	224
FEMA Forms 20–16, 20–16A, 20–16C: Summary Sheet for Assurances and Certifications.	56	1	20 minutes	18.6
SF LLL: Disclosure of Lobbying Activities	56	1	10 minutes	9.3
FEMA Form 20–20: Budget Information Non-Construction Programs.	56	2	9.7 hours	1086.4
Narrative Statement	56	1	4 hours	224

FEMA Forms	No. of respondents (A)	Frequency of response (B)	Hours per response and recordkeeping (C)	Annual burden hours (A×B×C)
Progress Reports	56	2	2 hours	224
Extension or Change Requests	5	1	1 hour	5
Audits of States, Local Governments, and Non-Profit Organizations.	56	1	30 hours	1680
Total		789		3555.3

Estimated Cost: The total annual estimated costs to States and Indian tribal governments for information collection associated with management costs are $67,195. This calculation is based on the number of burden hours for each type of information collection/form, as indicated above, and the estimated wage rates for those individuals responsible for collecting the information or completing the forms.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Veandean H. Pace, Financial and Acquisition Management Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, telephone (202) 646–3256, facsimile (202) 646–3846, or e-mail *veandeen.pace@fema.gov* for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625 or facsimile number (202) 646–3347 or email *muriel.anderson@fema.gov.*

Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This proposed rule would not have an annual effect on the economy of $100 million or more and is not an economically significant rule under Executive Order 12866. Also, we know of no other conditions that would qualify the rule as a ''significant regulatory action'' within the definition of section 3(f) of the Executive Order. To the extent possible, this rule adheres to the principles of regulation as set forth in Executive Order 12866. The Office of Management and Budget has not reviewed this rule under the provisions of the Executive Order.

Executive Order 13132, Federalism

Executive Order 13132 sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this proposed rule under Executive Order 13132 and have determined that the rule does not have ''substantial direct effects on the States'' and therefore does not have the type of federalism implications contemplated by the Executive Order. We do not foresee that the rule would affect significantly the distribution of power and responsibilities among the various levels of government or limit the policymaking discretion of the States.

We believe that the publication of this proposed rule is consistent with the terms of Executive Order 13132. We invite comment from State and local representatives on this important issue.

Executive Order 12898, Environmental Justice

Under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994, we have undertaken to incorporate environmental justice into our policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in, denying persons the benefits of, or subjecting persons to discrimination because of their race, color, or national origin. No action that we can anticipate under the proposed rule will have a disproportionately high and adverse human health effect on any segment of the population. In addition, the proposed rule does not impose substantial direct compliance costs on those communities. Accordingly, the

requirements of the Executive Order do not apply to this proposed rule.

Executive Order 13084, Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, FEMA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal government, or we consult with those governments. If FEMA complies by consulting, Executive Order 13084 requires us to provide to the Office of Management and Budget a description of the extent or our prior consultations with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This proposed rule is required by statute, but we do not believe that it will significantly and uniquely affect the communities of Indian tribal governments, or the relationship between the Federal government and Indian tribes, or the distribution of power and responsibilities between the Federal government and Indian tribes. Moreover, the rule does not impose substantial direct compliance costs on tribal governments, nor does it preempt tribal law, impair treaty rights or limit the self-governing powers of tribal governments.

List of Subjects in 44 CFR Parts 206 and 207

Administrative costs, Administrative practice and procedure, Disaster assistance, Grant programs, Management costs, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 44 CFR, Subchapter D—Disaster Assistance, as follows:

1.Add part 207 to read as follows:

PART 207—MANAGEMENT COSTS

Sec.
207.1 Purpose.
207.2 Definitions.
207.3 Applicability and eligibility.
207.4 Responsibilities.
207.5 Determination of management costs.
207.6 Eligible use of funds.
207.7 Application procedures.
207.8 Grants management oversight.
207.9 Declarations before October 1, 2002.
207.10 Review of management cost rates.

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1979 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412.

§ 207.1 Purpose.

The purpose of this part is to implement section 324 of the Stafford Act, 42 U.S.C. 5165b.

§ 207.2 Definitions.

Cap means the maximum dollar amount provided to a State for management costs for a single declaration.

Chief Financial Officer (CFO) is the Chief Financial Officer of FEMA, or his/her designated representative.

Cognizant Agency means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed on behalf of all Federal agencies. The Office of Management and Budget publishes a listing of cognizant agencies.

Grant means an award of financial assistance. The management cost grant award will be based on a percentage of the projected Federal share of assistance provided under sections 403, 404, 406, 407, 502, and 503 of the Stafford Act.

Grantee means the government to which a grant is awarded that is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, the State is the grantee. However, after a declaration, an Indian tribal government may choose to be a grantee, or may act as a subgrantee under the State for purposes of administering a grant under Public Assistance (PA) and/or the Hazard Mitigation Grant Program (HMGP). When an Indian tribal government has chosen to act as grantee under PA and/or HMGP, it will also assume the responsibilities of a ''grantee'' under this part for the purposes of administering the management costs grant.

Hazard Mitigation Grant Program (HMGP) means the program authorized under section 404 of the Stafford Act, 42 U.S.C. 5170c and implemented at 44 CFR part 206, subpart N.

HMGP lock-in means the maximum level of HMGP funding available to a grantee for a particular disaster.

Indian tribal government is a federally recognized governing body of an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian tribe under the Federally Recognized Tribe List Act of 1994, 25 U.S.C 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

Lock-in means the amount of management cost funds available to a grantee for a particular major disaster or emergency, as FEMA determines at 30 days, six months, and after the final HMGP lock-in. The lock-in is a flat percentage of the Federal share for the combined dollar projections for PA and HMGP.

Management Costs means funding made available by FEMA to PA and HMGP grantees for use by grantees and subgrantees for contributions towards indirect costs, administrative expenses, and any other expenses not directly chargeable to a specific project.

Project refers to project as defined at 44 CFR 206.201(i) for PA and at 44 CFR 206.431(f) for HMGP.

Project Worksheet refers to FEMA Form 90–91, on which the scope of work and cost estimate for a logical grouping of work required as a result of a declared major disaster or emergency is documented.

Public Assistance (PA) means the program authorized under sections 403, 406, 407, 418, 419, 502, and 503 of the Stafford Act (42 U.S.C. 5170b, 5172, 5173, 5185, 5186, 5192, and 5193, respectively) and implemented at 44 CFR part 206, subparts C, G, and H.

Regional Director is a director of a regional office of FEMA, or his/her designated representative.

Stafford Act refers to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended (42 U.S.C. 5121–5206).

State is any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Subgrantee means the government or other legal entity to which a grantee awards a subgrant and which is accountable to the grantee for the use of the funds provided. Subgrantees can be a State agency, local government, private non-profit organization, or Indian tribal government.

We, our or *us* means FEMA.

§ 207.3 Applicability and Eligibility.

This rule applies to major disasters and emergencies declared by the President on or after October 1, 2002.

Only major disasters and emergencies for which the Public Assistance and/or Hazard Mitigation Grant Programs are declared and implemented are eligible for funding under this part.

§ 207.4 Responsibilities.

(a) *General.* This section identifies key responsibilities of FEMA and grantees in carrying out section 324 of the Stafford Act, 42 U.S.C. 5165b. These responsibilities are unique to the administration of this part and are in addition to common Federal government requirements of grantees and subgrantees, consistent with Office of Management and Budget circulars and other applicable requirements.

(b) *FEMA.* Key responsibilities of FEMA include:

(1) Determining the lock-in amount for management costs at no earlier than 30 days, six months, and after the final HMGP lock-in ceiling, using the most currently available estimates of projected costs (Federal share) of PA and HMGP.

(2) Obligating funds for management costs under §207.5(b) within five days of each applicable lock-in date.

(3) Reviewing management cost rates not later than three years after this rule is in effect and periodically thereafter.

(c) *Grantee.* Key responsibilities of the grantee include:

(1) Determining the amount of management cost funding to be applied to eligible costs for PA and HMGP.

(2) Determining the amount of management cost funding to be passed through to subgrantees for contributions to their costs for administering PA and HMGP projects and ensuring that it provides such funds to subgrantees.

(3) Managing management cost funds to ensure that PA and HMGP are properly implemented and closed out in a timely manner.

(4) Submitting a plan to the Regional Director for expenditure of any remaining management costs and ensuring that any such approved expenditures are closed out properly in a timely manner.

§ 207.5 Determination of management costs.

(a) *General.* This section describes how we determine the amount of funds that we will contribute under this part for management costs for a particular major disaster or emergency.

(b) *Lock-in.* We will determine the amount of funds that we will make available for management costs by a lock-in, which will act as a ceiling for funds available to grantees and subgrantees.

(1) We will determine the lock-in based on a flat percentage rate of the Federal share for the combined programs (PA and HMGP, sections 403, 404, 406, 407, 418, 419, 502, and 503 of the Stafford Act, 42 U.S.C. 5170b, 5170c, 5172, 5173, 5185, 5186, 5192, and 5193, respectively). For major disaster declarations on or after October 1, 2002, the rate will be 4.41%. For emergency declarations on or after October 1, 2002, the rate will be 3.16%.

(2) Not earlier than 30 days from the date of declaration, we will provide the grantee a preliminary lock-in amount for management costs based on the combined estimated projections at that time of the Federal share for PA and HMGP. At the time of the preliminary lock-in, we will obligate up to 25 percent of the estimated lock-in amount to grantees separately from obligations for PA and HMGP.

(3) For planning purposes, we will revise the lock-in amount at six months after the date of the declaration.

(4) We will determine the final lock-in amount nine months after date of declaration or after we determine the final HMGP lock-in, whichever is later. We will obligate the remainder of the lock-in amount to the grantee at that time.

(c) *Grant limits.* The dollar amount that we will provide to a grantee for management costs for a single declaration will not exceed $20,000,000.

(d) *Extensions or changes.* The grantee must justify in writing to the Regional Director any requests to change the amount of the lock-in or the cap, or to extend the time before lock-in. The Regional Director will recommend to the Chief Financial Officer whether to approve the extension or change. We will not make extensions or changes to lock-ins without the approval of the Chief Financial Officer.

(e) *Chief Financial Officer determination.* The Chief Financial Officer may change the amount of the lock-in or the cap, or extend the time before lock-in, if the Chief Financial Officer determines that the projections used to determine the lock-in were inaccurate to such a degree that the change to the lock-in would be material, or for other reasons that may warrant such changes. The Chief Financial Officer will not make such changes without consultation with the grantee and the Regional Director.

§ 207.6 Eligible use of funds.

(a) *General.* The grantee has primary responsibility for administration of management cost activities and accountability of funds as required by 44 CFR part 13, which details the general principles and requirements for allowable costs and grants management to State, local and federally recognized Indian tribal governments.

(b) *Grant determinations.* Grantees will determine the percentage or amount of funding used for each program (PA and HMGP) and the percentage or amount to pass through for subgrantee use under the two programs.

(c) *Pre-award costs.* Pre-award costs incurred from date of declaration until the application is submitted and approved in accordance with §207.7 may be eligible for reimbursement by funds provided under this part in accordance with 44 CFR 13.22.

(d) *Eligible costs.* The following represents eligible activities for which, if not charged directly to a project, the grantee or subgrantee may use management cost funds provided under this part in accordance with 44 CFR 13.22:

(1) Maintain a disaster administrative office, e.g., staff, staff travel, communications, printing, supplies, equipment, professional services, including indirect costs, directly related to the declaration for which the funds are provided;

(2) Provide technical assistance to disaster community applicants and subgrantees of disaster funding;

(3) Develop, revise, or update State administrative plans as required in 44 CFR 206.207(b) for PA and 44 CFR 206.437 for HMGP to assure that the plans are current with State policies and procedures and comply with program regulations;

(4) Review local plans for mitigation consistent with 44 CFR part 201;

(5) Assist in subgrantee application development, review, and selection of projects;

(6) Conduct or assist FEMA or the grantee in environmental consideration reviews;

(7) Provide oversight of grant, subgrant, or project contract implementation of:

(i) Grantee and subgrantee cash management;

(ii) Grantee and subgrantee accounting and reporting, including subgrantee accounting and tracking of progress and expenditure for projects;

(iii) Grantee and subgrantee cost documentation review;

(iv) Grantee and subgrantee monitoring, including report/desk reviews and site visits;

(v) Grantee and subgrantee audit compliance;

(vi) Closeout of subgrantee projects, e.g., final inspection, reconciliation of costs and payments, etc.; and

(8) Grantee closeout of all program activities.

(e) *Ineligible direct costs.* The following represents eligible project-related activities which, if paid with management cost funds provided under this part, may not be charged directly on a project worksheet:

(1) Project worksheet and application preparation;

(2) Small project validations;

(3) Technical assistance;

(4) Environmental consideration reviews;

(5) Project inspections;

(6) Cost reviews and/or financial audits; and

(7) Quarterly and closeout reports.

(f) *Subgrantee costs.* Subgrantees may not charge indirect costs directly to a project, but rather will consider them eligible for funds provided under this part.

(g) *Overtime, travel, and per diem costs.* Overtime, travel, and per diem costs incurred during work under sections 403, 407, 502, and 503 of the Stafford Act are not eligible for reimbursement under this part, but rather will be reimbursed directly through a Project Worksheet.

(h) *Retained management cost funds.* We may allow the grantee or subgrantee to retain any management cost funds not needed for a particular declaration so long as the grantee or subgrantee uses the remaining funds to cover costs associated with the disaster programs' general financial and grants management enhancements. Remaining funds may not be used for disaster-specific PA and HMGP program management costs for any declaration other than the one for which FEMA provided them. After the PA and HMGP grants are closed, the grantee must submit a plan in writing to the FEMA Regional Director describing how it proposes to expend the remaining funds. The Regional Director will recommend to the FEMA Chief Financial Officer whether to approve the plan. Examples of allowable charges include grants management training, financial systems improvements, and accounting enhancements. All such funds expenditures must comply with 44 CFR 13.22.

§ 207.7 Application procedures.

(a) *General.* This section describes the procedures to be used by the grantee in submitting an application for management cost funding.

(b) *Application submission.* The grantee must submit its initial management cost application to the Regional Director within 30 days of the declaration. We must receive the initial application before we will provide any assistance for management costs under this part. FEMA will work with the grantee to approve or reject the application within 30 days after we receive the application. If we reject the application, the grantee will have 30 days to resubmit it for reconsideration and approval. Once we approve the application, we will obligate the balance of the management costs lock-in in accordance with §207.5(b)(4).

(c) *Application Content.* The grantee will submit its management cost application to the Regional Director. The application must include:

(1) Standard Form (SF) 424, Application for Federal Assistance;

(2) FEMA Form 20–20, Budget Information—Non-Construction Programs and Budget Narrative;

(3) Necessary Assurances, Certifications, and Lobbying Disclosures:

(i) FEMA Form 20–16, Summary Sheet for Assurances and Certifications;

(ii) FEMA Form 20–16A, Assurances—Non-Construction Programs;

(iii) FEMA Form 20–16C, Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements;

(iv) SF–LLL, Disclosure of Lobbying Activities; and

(4) Narrative statement. The narrative statement must contain:

(i) A description of which types of activities described in § 207.6, Eligible use of funds, the grantee will undertake with management costs provided under this part;

(ii) A description of how the grantee will undertake activities described in § 207.6 if it does not plan to use management costs provided under this part to support them;

(iii) The grantee's plan for expending and monitoring the funds provided under this part and ensuring sufficient funds for grant closeout; and

(iv) An estimate of the percentage or amount of pass-through funds for management costs provided under this part that the grantee will make available to subgrantees.

(5) Copies of the PA and HMGP Administrative Plans that were updated pursuant to the declaration.

(d) *Revised Application.* The grantee must submit a revised SF 424, FEMA Form 20–20 and Budget Narrative to the Regional Director after final lock-in is determined.

§ 207.8 Grants management oversight.

(a) *General.* The grantee has primary responsibility for managing management cost activities and accountability of funds as indicated in 44 CFR part 13, which details the general principles and requirements for grants management for state, local and federally recognized Indian tribal governments. The grantee is responsible for ensuring that subgrantees meet all program and administrative requirements.

(b) *Period of performance.* The grantee must expend all management cost funds not later than six years from the date of major disaster or emergency declaration, or by 90 days after grant closeout, whichever is sooner. We will deobligate and return to FEMA any funds that the grantee does not disburse within six years. We may extend this period only at the written request of the grantee, with the recommendation of the Regional Director, and with the approval of the Chief Financial Officer. The grantee must include a justification in its request for an extension, and must demonstrate that there is work in progress that can be completed within the extended period of performance

(c) *Reporting requirements.*

(1) *Financial status reports.* The grantee must provide quarterly financial status reports to the Regional Director as required by the FEMA—State Agreement.

(2) *Progress reports.* The grantee must provide semi-annual progress reports to the Regional Director that describe overall progress on managing PA and HMGP, such as monitoring activities, results, obstacles to project completion, milestones, and upcoming events. Examples of progress that can be reported are completion of project identification and funding, pending environmental reviews, and scheduled technical assistance meetings to help local communities identify projects. The progress reports are due each April 30 and October 30 until the grant ends. The final progress report is due 90 days after the grant ends.

(d) *Closeout.* The grantee has primary responsibility for the closeout tasks associated with both the program and subgrantee requirements. Complying with each program's performance period requirement, the grantee must conduct final inspections for projects, reconcile subgrantee costs and payments, resolve negative audit findings, obtain final reports from subgrantees and reconcile the closeout activities of subgrantees with PA and HMGP grant awards.

(e) *Audit requirements.* Uniform audit requirements in 44 CFR 13.26 apply to all grant assistance provided under this part.

(f) *Document Retention.* In compliance with State law and procedures and with 44 CFR 13.42, grantees must retain records, including

source documentation to support expenditures/costs incurred against the grant award, for three years from the date of submission of the final Financial Status Report to FEMA. The grantee is responsible for resolving questioned costs that may result from the grant funding audit during the three-year record retention period and returning disallowed costs from ineligible activities.

§ 207.9 Declarations before October 1, 2002.

(a) *General.* This section describes how we will provide management costs for PA and HMGP for major disasters or emergencies declared before October 1, 2002.

(b) *Direct costs.* Eligible direct costs to complete approved activities are governed by 44 CFR part 13. The eligible direct costs for administration and management of the program are divided into two categories as follows:

(1) *Grantee costs*—(i) *Administrative costs.* We may provide funds to the grantee to cover the extraordinary costs that it incurred to prepare project worksheets or applications, final inspection reports, quarterly reports, final audits, and related field inspections by State employees, including overtime pay and per diem and travel expenses, but not including regular time for such employees. We will base the funds on the following percentages of the total amount of assistance provided (Federal share) for all subgrantees in the State under sections 403, 404, 406, 407, 502, and 503 of the Stafford Act (42 U.S.C. 5170b, 5170c, 5172, 5173, 5192, and 5193, respectively):

(A) For the first $100,000 of total assistance provided (Federal share), three percent of such assistance.

(B) For the next $900,000, two percent of such assistance.

(C) For the next $4,000,000, one percent of such assistance.

(D) For assistance over $5,000,000, one-half percent of such assistance.

(ii) *Management costs.* Except for the items listed in paragraph (b)(1)(i) of this section, other administrative costs will be paid in accordance with 44 CFR 13.22. The grantee and we will share such costs under the cost share provisions of applicable PA and HMGP regulations.

(2) *Subgrantee administrative costs.* The grantee may provide funds to the subgrantee to cover necessary costs of requesting, obtaining, and administering Federal disaster assistance subgrants, based on the following percentages of net eligible costs under sections 403, 404, 406, 407, 502, and 503 of the Stafford Act (42 U.S.C. 5170b, 5170c, 5172, 5173, 5192, and 5193, respectively), for an individual applicant (applicants in this context include State agencies):

(i) For the first $100,000 of net eligible costs, three percent of such costs.

(ii) For the next $900,000, two percent of such costs.

(iii) For the next $4,000,000, one percent of such costs.

(iv) For those costs over $5,000,000, one-half percent of such costs.

(c) *Indirect costs*—(1) *Grantee.* Indirect costs of administering the disaster program are eligible in accordance with the provisions of 44 CFR part 13 and OMB Circular No. A–87, if the grantee provides us with an Indirect Cost Rate approved by its Cognizant Agency.

(2) *Subgrantee.* No indirect costs of a subgrantee are separately eligible because all costs are to be either charged directly, or covered by the subgrantee administrative costs allowed under paragraph (b)(2) of this section.

(d) *Availability.* We will reimburse allowable costs as described in this section for a maximum of six years from date of the major disaster or emergency declaration. The period may only be extended at the written request of the grantee justifying the extension to the FEMA Regional Director and with the approval of the FEMA Chief Financial Officer.

§ 207.10 Review of management cost rates.

(a) We will review management cost rates not later than three years after this rule is in effect and periodically thereafter.

(b) In order for FEMA to review the management cost rates established, the grantee and subgrantee must document all costs expended for management costs (including cost overruns) and in accordance with 44 CFR part 13 and the approved grant award budget. After review of this documentation, we will determine whether the established management cost rate is adequate for the administration and closeout of the PA and HMGP programs.

(c) We will publish as a Notice in the **Federal Register** any changes to the management cost rates.

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

2. The authority citation for part 206 continues to read:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

Subpart H—Public Assistance

3. Amend §206.228 as follows:

(a) Remove paragraphs (a)(2), (a)(3) and (b), and reserve paragraph (b).

(d) Redesignate paragraph (a)(4) as paragraph (a)(2).

(e) Add paragraph (a)(3) to read as follows:

§ 206.228 Allowable costs.

(a) *Eligible direct costs.* * * *

(3) Administrative and management costs for major disasters and emergencies will be paid in accordance with 44 CFR part 207.

(b) [Reserved]

4. Revise § 206.439(a) to read as follows:

Subpart N—Hazard Mitigation Grant Program

§ 206.439 Allowable costs.

(a) *General.* Administrative and management costs for major disasters and emergencies will be paid in accordance with 44 CFR part 207.

* * * * *

Dated: August 20, 2002.

David A. Trissell,

Acting General Counsel.

[FR Doc. 02–21890 Filed 8–29–02; 8:45 am]

BILLING CODE 6718–01–P

Federal Register

Friday,
August 30, 2002

Part VII

Department of Education

Office of Special Education and Rehabilitative Services; Notices

DEPARTMENT OF EDUCATION

Rehabilitation Research and Training Center (RRTC) Program

AGENCY: National Institute on Disability and Rehabilitation Research (NIDRR), Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces two final priorities, one on Aging-Related Changes in Impairment for Persons Living with Physical Disabilities and one on Personal Assistance Services (PAS) under the Rehabilitation Research and Training Center (RRTC) Program for the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use one or more of these priorities for competitions in FY 2003 and in later years. We take this action to focus research attention on an identified national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: These priorities are effective September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via the Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Description of the Rehabilitation Research and Training Centers (RRTC) Program

The RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge, to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disabling conditions, or promote maximum social and economic independence for persons with disabilities. RRTCs operate in collaboration with institutions of higher education or providers of rehabilitation or other appropriate services. Additional information on the RRTC program can be found at: *http://www.ed.gov/offices/OSERS/NIDRR/Programs/res_program.html#RRTC.*

General Requirements

The RRTC must:

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties;
- Serve as a center for national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

These priorities reflect issues discussed in the New Freedom Initiative (NFI) and NIDRR's Long-Range Plan (the Plan). The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominiative.html.*

The Plan can be accessed on the Internet at: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

We published a notice of proposed priorities (NPP) for these programs in the **Federal Register** on May 20, 2002 (67 FR 35692).

There are no differences between the NPP and this notice of final priorities (NFP).

The backgrounds for each of the priorities were published in the NPP.

Analysis of Comments and Changes

In response to our invitation in the NPP, several parties submitted comments on the proposed priorities (18 parties for the Aging-Related Changes in Impairment for Persons Living with Physical Disabilities and 12 parties for the PAS). An analysis of the comments is published as an appendix at the end of this notice. We discuss comments under the priority to which they pertain.

Generally, we do not address technical and other minor changes and suggested changes the law does not authorize us to make under the applicable statutory authority.

Note: This notice does not solicit applications. In any year in which we choose to use these priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitve priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, an application that meets the invitational priority does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

Priority 1—Aging-Related Changes in Impairment for Persons Living With Physical Disabilities

This priority supports one Rehabilitation Research and Training Center on Aging-Related Changes in Impairment for Persons Living with Physical Disabilities. The purpose of the priority is to generate new knowledge regarding the characteristics, prevalence, and distribution of these changes, their interrelationships with lifestyle and environmental factors, and their consequences on health, activity, and participation across the life span. The priority seeks to improve rehabilitation outcomes by encouraging innovative interventions aimed at preventing or minimizing the impact of aging-related changes on the well-being and productivity of persons with physical disabilities. The RRTC is required to conduct significant and substantial cross-disability research and is encouraged to collaborate with one or more institutions, for the purposes of ensuring inclusion of multidisciplinary expertise across disability groups, and sufficient sample size and methodological rigor to generate robust findings.

The RRTC must:

(1) Clarify definitions and critically review and analyze strategies to measure aging-related changes in physical, psychological, and sensory impairment within and across at least two physical disabilities such as, but not limited to, Spinal Cord Injury (SCI), Cerebral Palsy, Post-Polio Syndrome,

Muscular Dystrophy, and Multiple Sclerosis;

(2) Using the disabilities selected, document aging-related changes and examine variations in terms of prevalence, magnitude of change, timing of onset (age and duration of disability), onset severity and socio-demographic distribution within, and between study groups;

(3) Develop a conceptual model, grounded in an appropriate theoretical framework, of aging-related changes in impairment that: (a) predicts determinants of increases or stability in severity of impairment such as age, disability, lifestyle, or environmental factors; (b) quantifies the interrelationships between stability and increases in impairment and the occurrence of secondary health conditions; and (c) evaluates the consequences of changes in impairment on activity and participation across major life domains;

(4) Using the model (see (3)) as a framework, identify or develop and evaluate rehabilitation techniques or interventions, or both, to mitigate the direct consequences of changes in impairment on health, activity limitations, and participation in employment, family life, independent living, community integration, and leisure and recreational activities; and

(5) Develop, implement, and evaluate a comprehensive plan to train policymakers, researchers, practitioners, service providers and advocates in rehabilitation and disability-related fields, and consumers and family members about aging-related changes in impairment, and the consequences for health, participation and quality of life of individuals with physical disabilities.

In carrying out the purposes of the priority, the RRTC must:

- Develop and implement during the first year of the grant, and in consultation with the National Center on Dissemination of Disability Research (NCDDR), a comprehensive plan that promotes broad dissemination to both consumer and professional audiences;
- Involve consumers and family members as appropriate in all stages of research and related activities;
- Address the unique needs of individuals aging with physical disabilities who are members of groups that have traditionally been underrepresented, and demonstrate use of culturally appropriate methods of data collection, measurement and dissemination;
- Collaborate on projects, as appropriate, with NIDRR-funded RRTCs, Rehabilitation Engineering Research Centers (RERCs), and Model Systems, and other public and private agencies and institutions;
- In the fourth year of the project, conduct a state-of-the-science national conference to disseminate and discuss the results of the research with researchers, policymakers, consumers, family members, and other stakeholders; and
- Demonstrate appropriate multidisciplinary linkages to Geriatrics, Gerontology and Rehabilitation.

Priority 2—Personal Assistance Services

This priority supports one Rehabilitation Research and Training Center on PAS. The purpose of this priority is to support methodologically rigorous collaborative research to generate new knowledge that informs service delivery providers and policymakers regarding the need for and provision of PAS at the worksite, in the community, and in home-based settings for individuals with physical, sensory, cognitive, psychiatric, and multiple disabilities.

The activities are:

(1) Identify or develop, or both, evaluate, and disseminate best practices for PAS at the worksite to facilitate employment of individuals with disabilities who need such accommodations;

(2) Identify or develop, or both, evaluate, and disseminate best practices for PAS in community- and home-based settings to facilitate maximum integration and participation by working-age and older adults with disabilities;

(3) Conduct research on the PAS workforce and workforce development that reflects geographic diversity and addresses PAS workforce recruitment, retention, compensation and benefits; professional training, development, and networking, for PAS providers, including communication between individual, group, public and private PAS providers; and crossover issues between disability and aging providers;

(4) Identify and analyze existing model State and Federal PAS policies and programs, and develop a database to inventory the results;

(5) Evaluate and determine the impact on, and relevance to, PAS at the worksite and in the community of recent policy initiatives, such as E.O. 13207 implementing the Olmstead decision (*Olmstead* v. *L.C.,* 527 U.S. 581), the NFI, and other systems change activities for changes to existing State and Federal policies and programs;

(6) Conduct research on the relationship between formal and informal PAS and caregiving support, and on the role of assistive technology (AT) in complementing personal assistance to enhance the function, access, independent living, and quality of life of working-age and older adults with disabilities. In addition, identify and evaluate barriers to obtaining and using multiple sources of support; and

(7) Identify, develop, and evaluate models to eliminate barriers encountered by working-age and older adults with disabilities in accessing and utilizing both formal and informal PAS and AT to support employment, functional independence, and community integration.

In addition to proposed activities, in carrying out these priorities, the applicant must:

- Involve individuals with disabilities or their family members, or both and persons who are members of groups that have traditionally been underrepresented, as appropriate, in all stages of research and related activities;
- In the fourth year of the project, conduct a state-of-the-science national conference to disseminate and discuss the results of the research with researchers, policymakers, consumers, and other stakeholders;
- Coordinate with other entities carrying out related research or training activities; and
- Identify coordination responsibilities through consultation with the NIDRR project officer.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Center)

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: August 27, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Analysis of Comments and Changes

Priority 1—Aging Related Changes in Impairment for Persons Living with Physical Disabilities

Comments: Several commenters said by shifting the target population focus of this RRTC from SCI specific to cross-disability, the ongoing research and training efforts to address the unique needs and issues of the aging SCI population will be diluted.

Discussion: The priority allows applicants the discretion to propose investigation across two or more physical disability groups, one of which may be SCI. Further, it is not the intent of the Department of Education to de-emphasize the need and value of SCI research or dilute ongoing research efforts in the field of aging and SCI. This is demonstrated by review of NIDRR's research portfolio, in which funded Field-Initiated Projects, RERCs, SCI Model Systems, and other RRTCs focus some of their research and development efforts either directly or indirectly on issues of aging and SCI.

Change: None.

Comments: Several commenters suggested that the shift in focus and title of the currently funded RRTC on Aging with SCI to the RRTC on Aging-Related Changes in Impairment for Persons Living with Physical Disabilities constitutes a change that requires formal announcement and opportunity for public comment as stipulated in Executive Order 12866

Discussion: Executive Order 12866 establishes a requirement to seek public comment on rules adopted for new competitions. There is no obligation to take public comment on refocusing current competitions or not renewing old competitions. This NIDRR priority is not deemed to be new, but simply a redirection in focus with a goal of fostering interdisciplinary research collaboration and inclusion across disability groups that have been identified, empirically and anecdotally, as experiencing similar aging-related changes and declines. As the current priority requires a cross-disability research design, it does not prohibit the inclusion of the SCI population as one of the physical disability groups to be studied.

Change: None.

Priority 2—Personal Assistance Services

Comments: Several commenters noted the extensive scope of work proposed for the RRTC and recommended that the scope of work be revised. Some comments related to the significant set of activities proposed for a single RRTC. Comments included a variety of suggestions to parse the work for this RRTC including a focus primarily on workers who provide PAS and on home and community-based PAS, with separate RRTCs created to focus on PAS at the worksite. At the same time, other commenters underscored the interrelationship between PAS and participation outcomes at home, in the community, and at the workplace.

Discussion: NIDRR agrees that the scope of work for the proposed RRTC on PAS is substantial. In developing the proposed RRTC, we considered existing literature and data, reports, and reviews related to previous NIDRR-funded work on PAS, conference findings, discussions with other Federal agencies, and the current policy framework related to PAS. Following the numerous review activities, we discussed the range of critical issues for such an RRTC. As a result, we concluded that there is an urgent need to address PAS across the continuum of the lived experience of people who need such services. In policy and practice, we must work to develop knowledge to facilitate resources that assure quality PAS across a range of daily activities in a variety of environments. As an example, PAS at the worksite could be necessary and available but may be of little value if an individual lacks such services at home and cannot tend to personal needs in order to prepare for the workday. There may be value in conducting research or development activities associated with a specific type of service or for a single range of needs. However, we think there is a critical need to first develop a coordinated effort in light of recent policy initiatives.

Change: None.

Comments: Several commenters suggested resources that might be helpful in carrying out the goals of the priority. These included models of support organizations for personal care attendants (PCA) and entities conducting research related to that proposed in the priority.

Discussion: NIDRR is very appreciative of the many offers of support and resources we received from commenters. Through the NIDRR project officer, we will work with the successful applicant to assure coordination as appropriate.

Change: None.

Comments: Several commenters noted the need to study PAS across a range of disabilities including cognitive, psychiatric, and sensory disabilities.

Discussion: NIDRR agrees that there is a need to address PAS across a range of disabilities and has required that applicants propose methodologies for doing so. In some cases, solid research may be available and can be evaluated and inventoried for policymakers, consumers, service providers, and others. For some domains of disability, new and creative approaches must be developed. As an example, two commenters claimed that there is insufficient literature related to PAS for individuals with disabilities associated with mental health and, as a result, suggested a strong emphasis on cognitive and psychiatric disabilities. Regarding sensory disabilities, an applicant may choose to include activities associated with such disabilities within the range of its proposal. NIDRR has no basis to determine that all applicants should be required to adopt the same approach. The peer review process will evaluate the merits of the proposal.

Change: None.

Comments: Two commenters discussed dissemination and training activities. One suggested that the priority include a national website to serve as a referral tool for consumers who need PCAs and a source of training on consumer-controlled PAS. Another noted the need to disseminate information about how people with various disabilities utilize PAS and AT and the range of service delivery models available across different types of disabilities.

Discussion: An applicant must propose modes of dissemination and training and could include such activities; however, NIDRR has no basis to determine that all applicants should be required to focus on these particular methodologies. The peer review process will evaluate the merits of the proposal.

Change: None.

Comments: Several commenters suggested research issues to be addressed as part of the priority. These included current public policies that facilitate or hinder provision of PAS; shortages of longterm care workers; quality and legal accountability of consumer-directed PAS; international issues; use of a business model to study work-related PAS; and the value of PAS for participation of people with disabilities.

Discussion: An applicant must address issues associated with policies to facilitate provision of and payment of PAS and development of well-trained workers to provide PAS. An applicant must also investigate provision of adequate PAS at home, in the community, and the places where individuals with disabilities work. Within each of the broad areas of research, there are many possible approaches to conducting research. NIDRR has no basis to determine that all applicants should be required to adopt the same approach. The peer review process will evaluate the merits of the proposal.

Change: None.

Comments: One commenter noted that there is a substantial body of research about PAS. The commenter suggested that existing research must be used as a base, without redundancy by the proposed RRTC.

Discussion: NIDRR agrees that existing research may be considered by the applicant. It is our goal to foster work that expands upon existing knowledge or that addresses key issues that have received inadequate attention in past research. The peer review process will evaluate the merits of the proposal.

Change: None.

Comments: Two commenters underscored the financial issues of PAS, noting that funding for PAS is critical. The commenters noted that public policies associated with funding must be evaluated and that empirical research is needed to address the economic and participation effects of PAS.

Discussion: NIDRR agrees that funding of PAS is a fundamental issue for people who need such services. As noted in the priority, public policies associated with PAS must be carefully evaluated. Research could address a range of issues associated with the benefits of PAS. The NFI, Olmstead, and other systems change activities provide a current context for developing such activities.

Change: None.

Comments: Two commenters suggested that the priority require activities associated

with education-related PAS. One comment noted that parents of children with disabilities need reliable PAS for their children, including school-based services, so that they might pursue employment. A second comment emphasized a need to study PAS for working-aged youth transitioning from school to work and for those in postsecondary educational institutions.

Discussion: NIDRR agrees that significant issues exist related to both school-based services and transition. NIDRR has no basis to determine that all applicants should be required to study PAS in school or transition settings. An applicant could propose to investigate PAS for youth. The peer review process will evaluate the merits of the proposal.

Change: None.

[FR Doc. 02–22277 Filed 8–29–02; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133B]

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research—Rehabilitation Research and Training Centers (RRTC) Program; Notice inviting applications for fiscal year (FY) 2003

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions you need to apply for a grant under this competition.

Purpose of the Program

The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973 (the Act), as amended.

For FY 2003, the competition for new awards focuses on projects designed to meet the priorities we describe in the PRIORITIES section of this application notice. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

APPLICATION NOTICE FOR FISCAL YEAR 2003

[Rehabilitation Research Training Centers, CFDA No. 84.133B]

Funding priority	Application available	Deadline for transmittal of applications	Estimated available funds	Maximum award amount (per year)*	Estimated number of awards	Project period (months)
84.133B–10 Aging-Related Changes in Impairment for Persons Living with Physicial Disabilities	August 30, 2002	September 30, 2002	$700,000	$700,000	1	60
84.133B–11 Personal Assistance Services	August 30, 2002	September 30, 2002	900,000	900,000	1	60

*NOTE: We will reject without consideration any application that proposes a budget exceeding the stated maximum award amount in any year (*See* 34 CFR 75.104(b)).

NOTE: The Department is not bound by any estimates in this notice.

Eligible Applicants: Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86 and 97, and (b) The program regulations 34 CFR part 350.

Priorities

This competition focuses on projects designed to meet the priorities in the notice of final priorities for these programs, published elsewhere in this issue of the **Federal Register**. The priorities are:

Priority 1—Aging-Related Changes in Impairment for Persons Living with Physical Disabilities

Priority 2—Personal Assistance Services

For FY 2003, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one or more of these priorities.

Selection Criteria

We use the following selection criteria to evaluate applications under this program. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

An additional 10 points may be earned by an applicant depending on how well they meet the additional selection criterion elsewhere in this notice.

(a) *Importance of the problem* (6 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (2 points).

(ii) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities (2 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (2 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total).

(1) The Secretary considers the responsiveness of the application to the absolute or competitive priority published in the **Federal Register**.

(2) In determining the responsiveness of the application to the absolute or competitive priority, the Secretary considers the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) *Design of research activities* (35 points total).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the

field, including a substantial addition to the state-of-the-art (5 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (5 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (5 points);

(C) Each sample population is appropriate and of sufficient size (5 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (5 points); and

(E) The data analysis methods are appropriate (5 points).

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (5 points).

(d) *Design of training activities* (12 points total).

(1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety (2 points).

(ii) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (2 points).

(iii) The extent to which the proposed training content—

(A) Covers all of the relevant aspects of the subject matter (2 points); and

(B) If relevant, is based on new knowledge derived from research activities of the proposed project (1 point).

(iv) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials (2 points).

(v) The extent to which the proposed training materials and methods are accessible to individuals with disabilities (1 point).

(vi) The extent to which the applicant is able to carry out the training activities, either directly or through another entity (2 points).

(e) *Design of dissemination activities* (9 points total).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If appropriate, is based on new knowledge derived from research activities of the project (1 point).

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(iii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration (2 points).

(iv) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (2 points).

(v) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(f) *Design of technical assistance activities* (4 points total).

(1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (1 point).

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter (1 point).

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (1 point).

(iv) The extent to which the technical assistance is accessible to individuals with disabilities (1 point).

(g) *Plan of operation* (4 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (2 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (2 points).

(h) *Collaboration* (4 points total).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (2 points).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (2 points).

(i) *Adequacy and reasonableness of the budget* (3 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (1 point).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(j) *Plan of evaluation* (7 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (1 point); and

(B) Achieving the project's intended outcomes and expected impacts (1 point).

(ii) The extent to which the plan of evaluation will be used to improve the

performance of the project through the feedback generated by its periodic assessments (1 point).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(k) *Project staff* (8 points total).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (1 point).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(iv) The extent to which the project staff includes outstanding scientists in the field (1 point).

(l) *Adequacy and accessibility of resources* (4 points).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (1 point).

(ii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research (2 points).

(iii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (1 point).

Additional Selection Criterion (10 points).

We use the following additional criterion to evaluate applications under each priority.

Up to 10 points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under these absolute priorities. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities. Thus, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for these priorities. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Application Procedures

The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (*See* 34 CFR 75.104(b)).

The Secretary strongly recommends the following:

(1) a one-page abstract;

(2) an Application Narrative (i.e., Part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more *125* numbered, double-spaced (no more than 3 lines per vertical inch) 8.5″ x 11″ pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(3) a font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

Instructions for Transmitting Applications

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(a) *If You Send Your Application by Mail;*

You must mail the original and two copies of the application on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional seven copies of your application. Mail your application to: U. S. Department of Education, Application Control Center, Attention: (CFDA # 84.133B and title), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(b) *If You Deliver Your Application by Hand;*

You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional seven copies of your application. Deliver your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.133B and title), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

The Application Control Center accepts application deliveries daily between 8 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

Notes

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or if you or your courier deliver it by hand, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education

Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any, and title—of the competition under which you are submitting your application.

Application Forms and Instructions

The Appendix to this notice contains forms and instructions, a statement regarding estimated public reporting burden, and various assurances and certifications. Please organize the parts and additional materials in the following order:

- Part I: Application for Federal Assistance (ED 424 (Rev. 11/30/2004)) and instructions.
- Part II: Budget Form—Non-Construction Programs (ED 524) and instructions and definitions.
- Part III: Application Narrative.
- Part IV: Additional Materials
- Estimated Public Reporting Burden.
- Assurances—Non-Construction Programs (Standard Form 424B).
- Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (**Note:** ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)
- Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via the Internet: donna.nangle@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/legislation/FedRegister.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: August 27, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this collection of information is 1820–0027. Expiration date: 2/28/2003. We estimate the time required to complete this collection of information to average 30 hours per response, including the time to review instructions, search existing data sources, gather the data needed, and complete and review the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651. If you have comments or concerns regarding the status of your submission of this form, write directly to: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3412, Switzer Building, Washington, DC 20202–2645.

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this section. Applicants are required to submit an original and two copies of each application as provided in this section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I get an extension of the due date?

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What should be included in the application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What format should be used for the application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I submit applications to more than one NIDRR program competition or more than one application to a program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the allowable indirect cost rate?

The limits on indirect costs vary according to the program and the type of application. An applicant for an RRTC is limited to an indirect rate of 15%. An applicant for a

Disability and Rehabilitation Research Project should limit indirect charges to the organization's approved indirect cost rate. If the organization does not have an approved indirect cost rate, the application should include an estimated actual rate.

6. Can profitmaking businesses apply for grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can individuals apply for grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR staff advise me whether my project is of interest to NIDRR or likely to be funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How do I assure that my application will be referred to the most appropriate panel for review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How soon after submitting my application can I find out if it will be funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I call NIDRR to find out if my application is being funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If my application is successful, can I assume I will get the requested budget amount in subsequent years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will all approved applications be funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–P

Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
City _____ State _____ County _____ ZIP Code + 4 _____

Organizational Unit

2. Applicant's D-U-N-S Number ☐☐☐☐☐☐☐☐☐
3. Applicant's T-I-N ☐☐-☐☐☐☐☐☐☐
4. Catalog of Federal Domestic Assistance #: 8 4 ☐☐☐☐
Title: _____
5. Project Director: _____
Address: _____
City _____ State _____ ZIP Code + 4 _____
Tel. #: _____ Fax #: _____
E-Mail Address: _____
6. Novice Applicant ☐ Yes ☐ No
7. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)
8. Type of Applicant (Enter appropriate letter in the box.) ☐

A State
B Local
C Special District
D Indian Tribe
E Individual
F Independent School District
G Public College or University
H Private, Non-Profit College or University
I Non-Profit Organization
J Private, Profit-Making Organization
K Other (Specify): _____

Application Information

9. Type of Submission:
—PreApplication
☐ Construction
☐ Non-Construction
—Application
☐ Construction
☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes (Date made available to the Executive Order 12372 process for review): _____
☐ No (If "No," check appropriate box below.)
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: _____ End Date: _____

12. Are any research activities involving human subjects planned at any time during the proposed project period?
☐ Yes (Go to 12a.) ☐ No (Go to item 13.)

12a. Are all the research activities proposed designated to be exempt from the regulations?
☐ Yes (Provide Exemption(s) #): _____
☐ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	0.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (Please type or print name clearly.)

b. Title

c. Tel. #: _____ Fax #: _____

d. E-Mail Address:

e. Signature of Authorized Representative | Date: _____

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

   Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

    Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the

activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) Sources of Materials: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Recruitment and Informed Consent: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Potential Risks: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Protection Against Risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Importance of the Knowledge to be Gained: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) Collaborating Site(s): If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	**3. Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ **Prime** ☐ **Subawardee** Tier _____, *if known*: **Congressional District**, *if known*:	**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:** **Congressional District**, *if known*:	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known*:	**9. Award Amount,** *if known*: $	
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
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Federal Register

Friday,
August 30, 2002

Part VIII

General Services Administration

41 CFR Chapter 301 and Part 301–11
Federal Travel Regulation; Maximum Per Diem Rates; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301 and Part 301–11

[FTR Amendment 109]

RIN 3090–AH66

Federal Travel Regulation; Maximum Per Diem Rates

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: An analysis of lodging and meal cost survey data reveals that the listing of maximum per diem rates for locations within the continental United States (CONUS) should be updated to provide for the reimbursement of Federal employees' expenses covered by per diem. This final rule increases/decreases the maximum per diem allowance in certain existing per diem localities and adds new per diem localities. In an effort to improve the ability of the per diem rates to meet the lodging demands of Federal travelers to high cost travel locations, the General Services Administration (GSA) has integrated the contracting mechanism of the new Federal Premier Lodging Program (FPLP) into the per diem rate-setting process. The FPLP will enhance the Government's ability to meet its overall room night demand, and allow travelers to find lodging close to where they conduct business.

DATES: This final rule is effective October 1, 2002, and applies for travel performed on or after October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Joddy Garner, Office of Governmentwide Policy, Travel Management Policy Division, at 202 501–4857.

SUPPLEMENTARY INFORMATION:

A. Background

In order to provide adequate per diem reimbursement for Federal employee travel, the maximum per diem allowances are changed in specific locations. Properties in high cost travel areas are under no obligation to provide lodging to Federal travelers at the per diem rate. Thus, the General Services Administration (GSA) established the Federal Premier Lodging Program (FPLP) to contract directly with properties in high cost travel markets to make available a set number of rooms to Federal travelers at contract rates. For the locations where FPLP contracts are already effective, GSA has adopted the contract rates as the per diem lodging rates applicable to these locations. For the destinations where we plan to award FPLP contracts in the near future, we also plan to adopt the contract rates as the new per diem lodging rates, but we cannot make these changes until the new contracts become effective. Therefore, these lodging rate changes will become effective at a later date. A listing of these proposed new FPLP destinations follows the per diem rates listing.

For fiscal year (FY) 2003, significant changes were made regarding the per diem rates. There are 13 new destinations being added to the per diem listing, and an increase in the lodging rate for Pensacola, Florida. However, the FY 2002 standard CONUS per diem rate and all other per diem lodging rates remain unchanged through September 30, 2003 (except for the proposed new FPLP destinations mentioned above). This is due to our establishment of a Governmentwide Per Diem Advisory Board (Board) to review the current per diem rate setting process and methodology. Recommendations from the Board are forthcoming in December 2002, and we will consider appropriate per diem changes at that time. In addition, new M&IE rates for locations in designated markets have been approved, as well as a new M&IE tier of $50.

B. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibilitiy Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed revisions do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 301–11

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, 41 CFR chapter 301 is amended as follows:

PART 301–11—PER DIEM EXPENSES

1. The authority citation for part 301–11 continues to read as follows:

Authority: 5 U.S.C. 5707.

2. In § 301–11.18 the table is revised to read as follows:

§ 301–11.18 What M&IE rate will I receive if a meal(s) is furnished at nominal or no cost by the Government or is included in the registration fee?

* * * * *

M&IE	30	34	38	42	46	50
Breakfast	$6	$7	$8	$9	$9	$10
Lunch	6	7	8	9	11	12
Dinner	16	18	20	22	24	26
Incidentals	2	2	2	2	2	2

3. Appendix A to chapter 301 is revised to read as follows:

Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

The maximum rates listed below are prescribed under part 301–11 of this chapter for reimbursement of per diem expenses incurred during official travel within CONUS (the continental United States). The amount shown in column (a) is the maximum that will be reimbursed for lodging expenses excluding taxes. The M&IE rate shown in column (b) is a fixed amount allowed for meals and incidental expenses covered by per diem. The per diem payment calculated in accordance with part 301–11 of this chapter for lodging expenses plus the M&IE rate may not exceed the maximum per diem rate shown in column (c). Seasonal rates apply during the periods indicated. It is the policy of the Government, as reflected in the Hotel Motel Fire Safety Act of 1990 (Public Law 101–391, September 25, 1990 as amended by Public Law 105–85, November 18, 1997), referred to as ''the Act'' in this paragraph, to save lives and protect property by promoting fire safety in hotels, motels,

and all places of public accommodation affecting commerce. In furtherance of the Act's goals, employees are encouraged to stay in a facility which is fire-safe, *i.e.*, an approved accommodation, when commercial lodging is required. Lodgings that meet the Government requirements are listed on the U.S. Fire Administration's Internet site at *http://www.usfa.fema.gov/applications/hotel.*

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Per diem locality:		Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city[1]	County and/or other defined location [2], [3]					
CONUS, Standard rate:		55		30		85
(Applies to all locations within CONUS not specifically listed below or encompassed by the boundary definition of a listed point. However, the standard CONUS rate applies to all locations within CONUS, including those defined below, for certain relocation subsistence allowances. See parts 302-2, 302-4, and 302-5 of this subtitle.)						
ALABAMA						
Birmingham	Jefferson	59		42		101
Decatur	Morgan	69		34		103
Gulf Shores	Baldwin					
(May 15-September 4)		101		38		139
(September 5-May 14)		64		38		102
Huntsville	Madison	67		38		105
Montgomery	Montgomery	57		42		99
Tuscaloosa	Tuscaloosa	63		34		97
ARIZONA						
Casa Grande	Pinal					
(January 1-April 30)		80		38		118
(May 1-December 31)		65		38		103
Chinle	Apache					
(May 1-October 31)		98		38		136
(November 1-April 30)		55		38		93
Flagstaff	All points in Coconino County not covered under Grand Canyon per diem area					
(May 1-October 31)		67		38		105
(November 1-April 30)		55		38		93
Grand Canyon	All points in the Grand Canyon National Park and Kaibab National Forest within Coconino County					
(May 1-October 21)		106		46		152
(October 22 –April 30)		94		46		140
Kayenta	Navajo					
(April 15-October 15)		98		34		132
(October 16-April 14)		65		34		99
Phoenix/Scottsdale	Maricopa					
(January 1-April 15)		107		46		153
(April 16-May 31)		79		46		125
(June 1-August 31)		59		46		105
(September 1-December 31)		90		46		136
Tucson	Pima County; Davis-Monthan AFB					
(January 1-April 15)		85		42		127
(April 16-December 31)		58		42		100
Yuma	Yuma	68		38		106
ARKANSAS						
Hot Springs	Garland	60		34		94
Little Rock	Pulaski	72		38		110

Per diem locality:		Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city[1]	County and/or other defined location [2], [3]					
CALIFORNIA						
Clearlake	Lake					
(May 5-September 30)		85		34		119
(October 1-May 4)		69		34		103
Contra Costa County	Contra Costa	108		46		154
Death Valley	Inyo	60		46		106
Fresno	Fresno	73		34		107
Kern County	Kern County	68		42		110
Los Angeles	Los Angeles; Orange and Ventura Counties; Edwards AFB; Naval Weapons Center and Ordinance Test Station, China Lake (see Santa Monica)	99		50		149
Mammoth Lakes	Mono	70		46		116
Marin County	Marin	108		46		154
Merced	Merced	62		34		96
Modesto	Stanislaus	60		38		98
Monterey	Monterey					
(May 1-October 31)		94		46		140
(November 1-April 30)		75		46		121
Napa	Napa					
(April 1-November 15)		125		46		171
(November 16-March 31)		110		46		156
Oakhurst	Madera					
(May 1-September 30)		79		42		121
(October 1-April 30)		55		42		97
Oakland	Alameda	118		42		160
Ontario/Barstow/Victorville	San Bernardino	84		42		126
Palm Springs	Riverside					
(January 1-May 31)		129		46		175
(June 1-December 31)		84		46		130
Point Arena/Gualala	Mendocino	109		42		151
Redding	Shasta	78		34		112
Sacramento	Sacramento	79		46		125
San Diego	San Diego	99		50		149
San Francisco	San Francisco	159		50		209
San Luis Obispo	San Luis Obispo	79		42		121
San Mateo/Redwood City	San Mateo	134		46		180
Santa Barbara	Santa Barbara	114		42		156
Santa Cruz	Santa Cruz	108		46		154
Santa Monica	City limits of Santa Monica (see Los Angeles)					
(June 1-September 30)		125		42		167
(October 1-May 31)		109		42		151
Santa Rosa	Sonoma	89		46		135
Solano County	Solano; Travis Air Force Base	79		46		125
South Lake Tahoe	El Dorado (see also Stateline, NV)					
(June 1-August 31)		97		46		143
(September 1-May 31)		84		46		130
Sunnyvale/Palo Alto/San Jose	Santa Clara	150		50		200
Tahoe City	Placer	145		46		191
Truckee	Nevada					

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
(June 15-September 30)		81		46		127
(October 1-June 14)		63		46		109
Visalia	Tulare	69		42		111
West Sacramento	Yolo	69		34		103
Yosemite National Park	Mariposa					
(May 1-September 30)		114		46		160
(October 1-April 30)		82		46		128
COLORADO						
Aspen	Pitkin					
(January 1-April 30)		145		46		191
(May 1-December 31)		89		46		135
Boulder	Boulder	93		46		139
Colorado Springs	El Paso					
(May 15-September 15)		73		42		115
(September 16-May 14)		59		42		101
Cortez	Montezuma	69		34		103
Crested Butte	City limits of Crested Butte (see Gunnison County)					
(November 15-April 15)		97		46		143
(April 16-June 15)		58		46		104
(June 16-November 14)		71		46		117
Denver	Denver, Adams, and Arapahoe Counties, that portion of Westminster located in Jefferson County, and Lone Tree in Douglas County	112		46		158
Durango	La Plata					
(May 15-September 30)		99		42		141
(October 1-May 14)		70		42		112
Fort Collins	Larimer (except Loveland)	76		38		114
Glenwood Springs	Garfield					
(May 15-October 15)		95		34		129
(October 16-May 14)		55		34		89
Grand Junction	Mesa	64		34		98
Gunnison	Gunnison (except Crested Butte)					
(May 15-September 30)		70		38		108
(October 1-May 14)		55		38		93
Jefferson County	Jefferson	94		38		132
Loveland	City limits of Loveland (see Larimer County)	69		34		103
Montrose	Montrose	69		38		107
Pueblo	Pueblo					
(June 1-September 30)		72		38		110
(October 1-May 31)		58		38		96
Silverthorne/Keystone	Summit	170		42		212
Steamboat Springs	Routt	59		42		101
Telluride	San Miguel					
(December 20-September 30)		147		46		193
(October 1-December 19)		85		46		131
Trinidad	Las Animas	62		34		96
Vail	Eagle					
(December 1-March 31)		200		46		246
(April 1-November 30)		105		46		151

Per diem locality:		Maximum lodging amount (**room rate only—no taxes**) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city[1]	County and/or other defined location [2], [3]					
CONNECTICUT						
Bridgeport/Danbury	Fairfield	109		42		151
Hartford	Hartford	120		42		162
Lakeville/Salisbury	Litchfield	95		42		137
Middlesex County	Middlesex	78		34		112
New Haven	New Haven	87		38		125
New London/Groton	New London					
(May 1-October 31)		107		38		145
(November 1-April 30)		79		38		117
Putnam/Danielson	Windham	56		34		90
Storrs/Mansfield	Tolland	70		34		104
DELAWARE						
Dover	Kent					
(May 25-September 4)		75		38		113
(September 5-May 24)		64		38		102
Lewes	Sussex	120		42		162
Wilmington	New Castle					
(April 1-September 30)		109		38		147
(October 1-March 31)		99		38		137
DISTRICT OF COLUMBIA						
Washington, DC (also the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington, Loudoun, and Fairfax, in Virginia; and the counties of Montgomery and Prince George's in Maryland). (See also Maryland and Virginia.)		150		50		200
FLORIDA						
Altamonte Springs	Seminole	71		42		113
Bradenton	Manatee					
(January 1-April 30)		65		34		99
(May 1-December 31)		55		34		89
Cocoa Beach	Brevard	105		38		143
Daytona Beach	Volusia					
(February 1-August 31)		90		42		132
(September 1-January 31)		69		42		111
Fort Lauderdale	Broward					
(December 15-April 30)		100		46		146
(May 1-December 14)		69		46		115
Fort Myers	Lee					
(January 15-April 15)		70		46		116
(April 16-January 14)		55		46		101
Fort Pierce	Saint Lucie					
(December 15-April 30)		70		42		112
(May 1-December 14)		55		42		97

Per diem locality:		Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city[1]	County and/or other defined location [2], [3]					
Fort Walton Beach	Okaloosa					
(May 1-October 31)		110		42		152
(November 1-April 30)		80		42		122
Gainesville	Alachua	61		38		99
Gulf Breeze	Santa Rosa					
(May 1-September 30)		115		42		157
(October 1-April 30)		59		42		101
Jacksonville/Mayport	Duval; Mayport Naval Station	81		38		119
Key West	Monroe					
(January 1-April 30)		180		46		226
(May 1-December 31)		109		46		155
Kissimmee	Osceola					
(February 1-April 30)		77		38		115
(May 1-January 31)		64		38		102
Lakeland	Polk	71		38		109
Leesburg	Lake					
(November 1-April 15)		68		34		102
(April 16-October 31)		55		34		89
Miami	Dade	98		46		144
Naples	Collier					
(December 16-April 15)		109		42		151
(April 16-December 15)		69		42		111
Ocala	Marion	59		34		93
Orlando	Orange	95		46		141
Palm Beach (also the cities of Boca Raton, Delray Beach , Jupiter, Palm Beach Gardens, Palm Beach Shores, Singer Island and West Palm Beach)	Palm Beach	98		46		144
Panama City	Bay	74		42		116
Pensacola	Escambia	85		34		119
Punta Gorda	Charlotte					
(December 15-April 15)		75		38		113
(April 16-December 14)		55		38		93
Sarasota	Sarasota					
(January 1-April 30)		80		42		122
(May 1-December 31)		70		42		112
Sebring	Highlands	64		34		98
St. Augustine	St. Johns	65		42		107
Stuart	Martin	57		42		99
Tallahassee	Leon	65		38		103
Tampa/St. Petersburg	Pinellas and Hillsborough	93		42		135
Vero Beach	Indian River					
(December 15-April 15)		99		34		133

Per diem locality:		Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city[1]	County and/or other defined location [2, 3]					
(April 16-December 14))		59		34		93
GEORGIA						
Albany	Dougherty	57		38		95
Athens	Clarke	69		38		107
Atlanta	Fulton	112		42		154
Clayton County	Clayton	89		34		123
Cobb County	Cobb	112		42		154
Columbus	Muscogee	63		38		101
Conyers	Rockdale	69		38		107
DeKalb County	DeKalb	112		42		154
Dublin	Laurens	57		34		91
Gwinnett County	Gwinnett	69		42		111
Savannah	Chatham	89		42		131
IDAHO						
Boise	Ada	61		42		103
Coeur d'Alene	Kootenai	56		38		94
Ketchum	Blaine (except Sun Valley)					
(May 1-November 30)		84		42		126
(December 1-April 30)		74		42		116
McCall	Valley	62		42		104
Sun Valley	City limits of Sun Valley (see Blaine County)	149		42		191
ILLINOIS						
Aurora	Kane (except Elgin)	66		34		100
Chicago	Cook and Lake	155		50		205
Du Page County	Du Page	89		42		131
Elgin	City limits of Elgin (see Kane County)	60		34		94
Rockford	Winnebago	60		34		94
INDIANA						
Carmel	Hamilton	65		42		107
Ft. Wayne	Allen	58		34		92
Indianapolis	Marion County; Fort Benjamin Harrison	70		46		116
Lafayette	Tippecanoe	59		34		93
Michigan City	La Porte	65		38		103
Nashville	Brown					
(April 1-November 15)		75		42		117
(November 16-March 31)		59		42		101
South Bend	St. Joseph	61		38		99
Valparaiso/Burlington Beach	Porter	89		38		127
IOWA						
Cedar Rapids	Linn	60		30		90
Des Moines	Polk	67		34		101
KANSAS						
Kansas City/Overland Park	Wyandotte and Johnson	85		42		127
Wichita	Sedgwick	59		42		101

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
KENTUCKY						
Covington	Kenton	80		42		122
Lexington	Fayette	65		34		99
Louisville	Jefferson	69		42		111
Newport	Campbell	74		34		108
LOUISIANA						
Baton Rouge	East Baton Rouge Parish	78		42		120
Gonzales	Ascension Parish	59		38		97
Lake Charles	Calcasieu Parish	70		38		108
New Orleans/St. Bernard	Orleans, St. Bernard, Plaquemine and Jefferson Parishes					
(January 1-May 31)		139		46		185
(June 1-December 31)		89		46		135
Shreveport/Bossier City	Caddo	60		42		102
Slidell	St. Tammany	65		34		99
St. Francisville	West Feliciana	75		42		117
MAINE						
Bar Harbor	Hancock					
(June 15-October 15)		110		42		152
(October 16-June 14)		89		42		131
Bath	Sagadahoc					
(May 1-October 31)		61		38		99
(November 1-April 30)		55		38		93
Kennebunk/Kittery/Sanford	York					
(June 15-October 31)		129		42		171
(November 1-June 14)		69		42		111
Portland	Cumberland					
(July 1-October 31)		119		42		161
(November 1-June 30)		79		42		121
Rockport	Knox					
(July 1-August 26)		87		46		133
(August 27-June 30)		55		46		101
Wiscasset	Lincoln					
(July 1-October 31)		99		42		141
(November 1-June 30)		72		42		114
MARYLAND						
(For the counties of Montgomery and Prince George's, see District of Columbia.)						
Annapolis	Anne Arundel	90		46		136
Baltimore	Baltimore	137		46		183
Cambridge	Dorchester	70		34		104
Columbia	Howard	110		46		156
Frederick	Frederick	65		34		99
Grasonville	Queen Annes	75		42		117
Harford County	Harford County	104		42		146
Lexington Park/	St. Mary's and Calvert	75		38		113

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Leonardtown/Lusby						
Ocean City	Worcester					
(June 15-October 31)		144		46		190
(November 1-June 14)		59		46		105
St. Michaels	Talbot	100		46		146
MASSACHUSETTS						
Andover	Essex	109		42		151
Boston	Suffolk	159		50		209
Cambridge	Middlesex (except Lowell)	159		50		209
Falmouth	City limits of Falmouth					
(June 1-September 30)		105		38		143
(October 1-May 31)		70		38		108
Hyannis	Barnstable	94		42		136
Lowell	City limits of Lowell (except Cambridge) (see Middlesex County)	99		38		137
Martha's Vineyard	Dukes					
(June 1-October 15)		150		46		196
(October 16-May 31)		85		46		131
Nantucket	Nantucket					
(June 15-October 15)		150		46		196
(October 16-June 14)		75		46		121
New Bedford	City limits of New Bedford (see Bristol County)					
(May 15-October 15)		75		38		113
(October 16-May 14)		65		38		103
Northampton	Hampshire	72		38		110
Pittsfield	Berkshire	65		42		107
Plymouth	Plymouth					
(June 15-October 15)		119		38		157
(October 16-June 14)		99		38		137
Quincy	Norfolk	74		42		116
Springfield	Hampden	99		38		137
Taunton	Bristol (except New Bedford)	74		34		108
Worcester	Worcester	79		38		117
MICHIGAN						
Ann Arbor	Washtenaw	75		42		117
Berrien County	Berrien	59		34		93
Charlevoix	Charlevoix					
(June 1-August 31)		105		42		147
(September 1-May 31)		59		42		101
Detroit	Wayne	109		50		159
East Lansing/Lansing	Ingham	65		42		107
Frankenmuth	Saginaw	69		34		103
Frankfort	Benzie	62		34		96
Gaylord	Otsego	65		38		103
Grand Rapids	Kent	62		38		100
Holland	Ottawa	60		38		98
Leland	Leelanau	75		38		113
Mackinac Island	Mackinac	165		46		211

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Midland	Midland	72		38		110
Mount Pleasant	Isabella	65		38		103
Muskegon	Muskegon					
(May 1-August 31)		79		34		113
(September 1-April 30)		59		34		93
Ontonagon	Ontonagon	65		34		99
Petoskey	Emmet					
(June 1-October 31)		65		42		107
(November 1- May 31)		55		42		97
Pontiac/Troy/Auburn Hills	Oakland	94		42		136
Sault Ste Marie	Chippewa					
(May 15-October 15)		63		38		101
(October 16-May 14)		55		38		93
South Haven	Van Buren	76		38		114
Traverse City	Grand Traverse	125		46		171
Warren	Macomb	79		38		117
MINNESOTA						
Anoka County	Anoka	65		38		103
Dakota County	Dakota	80		38		118
Duluth	St. Louis					
(June 1-October 31)		85		42		127
(November 1-May 31)		56		42		98
Minneapolis/St. Paul	Hennepin County and Fort Snelling Military Reservation and Navy Astronautics Group (Detachment BRAVO), and Ramsey County	95		50		145
Rochester	Olmsted	73		38		111
MISSISSIPPI						
Bay St. Louis	Hancock					
(April 1-October 31)		69		38		107
(November 1-March 31)		55		38		93
Biloxi/Gulfport	Harrison	61		42		103
Robinsonville	Tunica	59		34		93
MISSOURI						
Branson	Taney					
(April 1-December 31)		62		38		100
(January 1-March 31)		55		38		93
Hannibal	Marion	57		34		91
Jefferson City	Cole	60		34		94
Kansas City	Jackson, Clay and Kansas City International Airport	85		46		131
Osage Beach	Camden	89		34		123
Platte	Platte (except Kansas City International Airport)	61		38		99
Springfield	Greene	63		34		97
St. Louis	St. Louis and St. Charles	90		50		140
St. Robert/Ft. Leonardwood	Pulaski	74		34		108

Per diem locality:		Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city[1]	County and/or other defined location [2], [3]					
MONTANA						
Big Sky	Gallatin (except West Yellowstone)	125		46		171
Polson/Kalispell	Lake and Flathead					
(June 1-September 15)		64		34		98
(September 16-May 31)		55		34		89
West Yellowstone	City limits of West Yellowstone (see Gallatin County)					
(June 1-September 30)		92		38		130
(October 1-May 31)		55		38		93
NEBRASKA						
Omaha	Douglas	63		42		105
NEVADA						
Incline Village/Crystal Bay	City limits of Incline Village and Crystal Bay					
(May 15-September 15)		99		42		141
(September 16-May 14)		79		42		121
Las Vegas	Clark County; Nellis AFB	79		42		121
Stateline	Douglas (see also South Lake Tahoe, CA)	129		46		175
NEW HAMPSHIRE						
Concord	Merrimack					
(May 1-October 31)		68		38		106
(November 1-April 30)		58		38		96
Conway	Carroll	89		42		131
Durham	Strafford	89		34		123
Hanover/Sullivan County	Grafton and Sullivan	95		38		133
Laconia	Belknap	73		38		111
Manchester	Hillsborough	89		38		127
Newington	Rockingham County; Pease AFB (except Portsmouth)					
(July 1-October 31)		81		38		119
(November 1-June 30)		65		38		103
Portsmouth	City limits of Portsmouth (see Rockingham County)					
(January 1-October 15)		85		42		127
(October 16-December 31)		69		42		111
NEW JERSEY						
Atlantic City	Atlantic					
(June 1-November 30)		149		46		195
(December 1-May 31)		109		46		155
Cape May	Cape May (except Ocean City)					
(June 1- November 30)		155		46		201
(December 1 - May 31)		95		46		141
Cherry Hill/Camden/ Moorestown	Camden and Burlington	74		46		120
Eatontown	Monmouth County; Fort Monmouth; (except Freehold)	84		42		126
Edison	Middlesex (except Piscataway)	169		34		203
Flemington	Hunterdon	80		38		118

Per diem locality:		Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city[1]	County and/or other defined location [2, 3]					
Freehold	City limits of Freehold (see Monmouth County)	85		38		123
Millville	Cumberland	58		34		92
Newark	Essex, Bergen, Hudson and Passaic	125		46		171
Ocean City	City limits of Ocean City (see Cape May County)					
(June 15-September 15)		215		42		257
(September 16-June 14)		80		42		122
Parsippany/Picatinney Arsenal/Dover	Morris	114		42		156
Piscataway/Belle Mead	Somerset; and City limits of Piscataway	144		42		186
Princeton/Trenton	Mercer	139		46		185
Tom's River	Ocean					
(May 15-September 15)		89		42		131
(September 16-May 14)		79		42		121
Union County	Union	107		42		149
NEW MEXICO						
Albuquerque	Bernalillo	65		42		107
Cloudcroft	Otero					
(June 1-October 31)		74		34		108
(November 1-May 31)		65		34		99
Las Cruces	Dona/Ana	60		34		94
Los Alamos	Los Alamos	71		38		109
Santa Fe	Santa Fe	99		46		145
Taos	Taos	75		38		113
NEW YORK						
Albany	Albany	96		46		142
The Bronx/Brooklyn/Queens	The boroughs of The Bronx, Brooklyn and Queens	168		46		214
Buffalo	Erie	78		42		120
Glens Falls	Warren					
(June 1-September 30)		74		38		112
(October 1-May 31)		55		38		93
Ithaca	Tompkins	69		38		107
Kingston	Ulster	79		42		121
Lake Placid	Essex					
(June 15-October 15)		86		42		128
(October 16-June 14)		59		42		101
Manhattan	The borough of Manhattan	208		50		258
Nassau County/Great Neck	Nassau	190		46		236
Niagara Falls	Niagara					
(May 1-October 31)		89		38		127
(November 1-April 30)		55		38		93
Nyack/Palisades	Rockland					
(April 1-September 30)		67		42		109
(October 1-March 31)		57		42		99
Owego	Tioga	73		34		107
Poughkeepsie	Dutchess	74		42		116
Rochester	Monroe	83		46		129
Saratoga Springs	Saratoga					

Per diem locality:		Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city[1]	County and/or other defined location [2, 3]					
(July 1-October 31)		95		42		137
(November 1-June 30)		75		42		117
Staten Island	Richmond	120		46		166
Suffolk County	Suffolk	149		42		191
Syracuse	Onondaga	70		38		108
Tarrytown	Westchester (except White Plains)	114		46		160
Waterloo/Romulus	Seneca					
(June 15-September 15)		89		34		123
(September 16-June 14)		69		34		103
Watkins Glen	Schuyler	59		38		97
West Point	Orange	121		38		159
White Plains	City limits of White Plains (see Westchester County)	165		46		211
NORTH CAROLINA						
Atlantic Beach	Carteret					
(June 1-August 31)		64		34		98
(September 1-May 31)		55		34		89
Chapel Hill	Orange	80		42		122
Charlotte	Mecklenburg	71		42		113
Cherokee	Swain					
(April 1-October 31)		62		34		96
(November 1-March 31)		55		34		89
Fayetteville	Cumberland	63		38		101
Greensboro	Guilford	87		42		129
Greenville	Pitt	64		34		98
Kill Devil	Dare					
(May 1-September 30)		114		42		156
(October 1-February 28)		75		42		117
(March 1-April 30)		55		42		97
New Bern/Havelock	Craven	62		38		100
Raleigh	Wake	74		42		116
Research Triangle Park/Durham	Durham	85		46		131
Wilmington	New Hanover					
(April 1-September 15)		65		38		103
(September 16-March 31)		58		38		96
Winston-Salem	Forsyth	64		42		106
NORTH DAKOTA (See footnote 5)						
OHIO						
Akron	Summit	72		42		114
Bellevue	Huron	72		34		106
Cambridge	Guernsey	60		34		94
Cincinnati	Hamilton and Warren	69		50		119
Cleveland	Cuyahoga	86		46		132
Columbus	Franklin	75		42		117
Dayton	Montgomery, Wright-Patterson AFB	65		34		99
Fairborn	Greene	66		38		104

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Geneva	Ashtabula	59		38		97
Hamilton	Butler	59		38		97
Lancaster	Fairfield	66		34		100
Port Clinton/Oak Harbor	Ottawa					
(June 1-September 5)		95		38		133
(September 6-May 31)		69		38		107
Sandusky	Erie					
(May 1-September 5)		85		42		127
(September 6-April 30)		55		42		97
Toledo	Lucas	69		34		103
OKLAHOMA						
Oklahoma City	Oklahoma	65		42		107
OREGON						
Ashland	Jackson	59		46		105
Beaverton	Washington	59		42		101
Bend	Deschutes					
(June 1-September 30)		69		42		111
(October 1-May 31)		59		42		101
Clackamas	Clackamas	66		38		104
Crater Lake	Klamath	74		34		108
Eugene	Lane (except Florence)	62		42		104
Florence	City limits of Florence (see Lane County)	80		38		118
Gold Beach	Curry	58		34		92
Lincoln City/Newport	Lincoln	65		38		103
Portland	Multnomah	91		42		133
Seaside	Clatsop					
(July 1-August 31)		79		38		117
(September 1-June 30)		59		38		97
PENNSYLVANIA						
Allentown	Lehigh	62		34		96
Chester/Radnor/Essington	Delaware (except Wayne)	75		38		113
Easton	Northampton	69		34		103
Erie	Erie	65		34		99
Gettysburg	Adams					
(May 1-October 31)		82		38		120
(November 1-April 30)		55		38		93
Harrisburg	Dauphin (except Hershey)	79		46		125
Hershey	City limits of Hershey (see Dauphin County)					
(June 1-September 15)		125		42		167
(September 16-May 31)		55		42		97
King of Prussia/Ft. Washington/Bala Cynwyd	Montgomery					
(April 1-November 30)		119		46		165
(December 1-March 31)		99		46		145
Lancaster	Lancaster					
(May 1-October 31)		70		42		112
(November 1-April 30)		60		42		102
Malvern/Downington/Valley Forge	Chester	83		42		125

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Mechanicsburg	Cumberland	74		34		108
Philadelphia	Philadelphia	118		50		168
Pittsburgh	Allegheny	79		46		125
Reading	Berks	75		42		117
Scranton	Lackawanna	60		34		94
Warminster	Bucks County; Naval Air Development Center	75		38		113
Wayne	City limits of Wayne (see Delaware County)	100		46		146
RHODE ISLAND						
East Greenwich	Kent County; Naval Construction Battalion Center, Davisville	79		42		121
Newport	Newport					
(April 1-December 31)		111		46		157
(January 1-March 31)		79		46		125
North Kingstown	Washington	89		30		119
Providence	Providence	89		46		135
SOUTH CAROLINA						
Aiken	Aiken	65		34		99
Charleston/Berkeley County	Charleston and Berkeley	106		42		148
Columbia	Richland	65		34		99
Greenville	Greenville	65		42		107
Hilton Head	Beaufort					
(March 15-September 30)		95		46		141
(October 1-March 14)		75		46		121
Myrtle Beach	Horry County; Myrtle Beach AFB					
(March 1-November 30)		99		46		145
(December 1-February 28)		59		46		105
SOUTH DAKOTA						
Custer	Custer					
(June 15-August 19)		70		34		104
(August 20-June 14)		55		34		89
Hot Springs	Fall River					
(June 15-October 15)		108		34		142
(October 16-June 14)		79		34		113
Rapid City	Pennington					
(May 15-September 30)		99		34		133
(October 1-May 14)		55		34		89
Sturgis	Meade					
(June 15-August 15)		79		30		109
(August 16-June 14)		55		30		85
TENNESSEE						
Alcoa/Townsend	Blount	63		34		97
Gatlinburg	Sevier					
(May 1-October 31)		78		42		120
(November 1-April 30)		70		42		112
Memphis	Shelby	75		42		117
Murfreesboro	Rutherford	57		34		91

Per diem locality:		Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city[1]	County and/or other defined location [2], [3]					
Nashville	Davidson	82		46		128
Williamson County	Willamson	60		34		94
TEXAS						
Amarillo	Potter	57		34		91
Arlington/Grapevine	Tarrant	77		38		115
Austin	Travis	80		42		122
Bryan	Brazos (except College Station)	60		34		94
College Station	City limits of College Station (see Brazos County)	69		38		107
Corpus Christi	Nueces	59		42		101
Dallas	Dallas	89		46		135
El Paso	El Paso	78		34		112
Fort Davis	Jeff Davis	68		34		102
Fort Worth	City limits of Fort Worth	94		42		136
Galveston	Galveston	76		46		122
Granbury	Hood	60		30		90
Houston	Harris County; L.B. Johnson Space Center and Ellington AFB.	73		46		119
Killeen	Bell	59		34		93
Laredo	Webb	70		34		104
McAllen	Hidalgo	70		38		108
Plano	Collin	70		38		108
San Antonio	Bexar	91		46		137
South Padre Island	Cameron					
(March 1-August 15)		91		38		129
(August 16-February 28)		70		38		108
Waco	McLennan	57		34		91
UTAH						
Bullfrog	Garfield	73		34		107
Cedar City	Iron	59		38		97
Moab	Grand					
(March 15-October 31)		90		38		128
(November 1-March 14)		55		38		93
Ogden/Layton/Davis County	Weber and Davis					
(January 15-February 28)		169		38		207
(March 1-January 14)		69		38		107
Park City	Summit					
(December 15-March 31)		169		46		215
(April 1-December 14)		79		46		125
Provo	Utah					
(January 15-February 28)		169		42		211
(March 1-October 31)		69		42		111
(November 1-January 14)		60		42		102
Salt Lake City	Salt Lake and Dugway Proving Ground and Tooele Army Depot					
(January 15-February 28)		169		38		207
(March 1-January 14)		75		38		113
VERMONT						
Burlington/St. Albans	Chittenden and Franklin	89		38		127
Manchester	Bennington	68		46		114

Per diem locality:		Maximum lodging amount (**room rate only—no taxes**) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city[1]	County and/or other defined location [2], [3]					
Middlebury	Addison	68		42		110
Montpelier	Washington	62		34		96
White River Junction	Windsor					
(September 15-October 31)		90		34		124
(November 1-September 14)		55		34		89
VIRGINIA						
(For the cities of Alexandria, Fairfax, and Falls Church, and the counties of Arlington, Fairfax, and Loudoun, see District of Columbia.)						
Charlottesville*		60		46		106
Colonial Heights*		77		34		111
Dinwiddie County	Dinwiddie	77		34		111
Fredericksburg	Spotsylvania and Stafford	72		30		102
Hopewell		77		34		111
Lynchburg*		64		42		106
Manassas/Woodbridge	Prince William	84		38		122
Petersburg		77		34		111
Prince George County	Prince George	77		34		111
Richmond*	Chesterfield and Henrico Counties, also Defense Supply Center	77		42		119
Roanoke*		59		38		97
Virginia Beach*	Virginia Beach (also Norfolk, Portsmouth and Chesapeake)*					
(April 1-October 31)		109		42		151
(November 1-March 31)		55		42		97
Wallops Island	Accomack					
(June 1-September 5)		89		38		127
(September 6-May 31)		69		38		107
Williamsburg*	Williamsburg (also Hampton, Newport News, York County, Naval Weapons Station, Yorktown)*					
(April 1-October 31)		99		42		141
(November 1-March 31)		59		42		101
Wintergreen	Nelson	125		46		171
*Denotes independent cities.						
WASHINGTON						
Anacortes	Skagit and Island	64		42		106
Bremerton	Kitsap	61		38		99
Everett	Snohomish (except Lynnwood)	59		42		101
Friday Harbor	San Juan					
(May 1-September 30)		95		46		141
(October 1-April 30)		65		46		111
Lynnwood	City limits of Lynnwood (see Snohomish County)	89		38		127
Ocean Shores	Grays Harbor					
(April 1-September 30)		82		42		124

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
(October 1-March 31)		55		42		97
Olympia/Tumwater	Thurston	58		42		100
Port Angeles	City limits of Port Angeles (see Clallam County)	65		42		107
Port Townsend	Jefferson	79		38		117
Seattle	King	143		50		193
Sequim	Clallam (except Port Angeles)					
(June 29 -September 1)		62		38		100
(September 2 -June 28)		55		38		93
Spokane	Spokane	63		42		105
Tacoma	Pierce	79		34		113
WEST VIRGINIA						
Berkeley Springs	Morgan	69		38		107
Charleston	Kanawha	78		42		120
Martinsburg/Hedgesville	Berkeley	59		34		93
Morgantown	Monongalia	66		38		104
Shepherdstown	Jefferson	79		38		117
Wheeling	Ohio	71		38		109
WISCONSIN						
Brookfield	Waukesha	66		42		108
Green Bay	Brown	59		38		97
Lake Geneva	Walworth					
(June 1-September 4)		85		42		127
(September 5-May 31)		66		42		108
Madison	Dane	62		42		104
Milwaukee	Milwaukee	95		46		141
Racine	Racine	80		34		114
Sheboygan	Sheboygan	59		34		93
Sturgeon Bay	Door					
(May 15-October 15)		81		38		119
(October 16-May 14)		56		38		94
Wisconsin Dells	Columbia					
(June 1-September 30)		85		42		127
(October 1-May 31)		55		42		97
WYOMING						
Cody	Park					
(May 15-October 15)		98		34		132
(October 16-May 14)		55		34		89
Jackson	Teton					
(November 1-September 15)		115		46		161
(September 16-October 31)		69		46		115

[1] Unless otherwise specified, the per diem locality is defined as "all locations within, or entirely surrounded by, the corporate limits of the key city, including independent entities located within those boundaries."

[2] Per diem localities with county definitions shall include "all locations within, or entirely surrounded by, the corporate limits of the key city as well as the boundaries of the listed counties, including independent entities located within the boundaries of the key city and the listed counties (unless otherwise listed separately)."

[3] When a military installation or Government-related facility (whether or not specifically named) is located partially within more than one city or county boundary, the applicable per diem rate for the entire installation or facility is the higher of the two rates which apply to the cities and/or counties, even though part(s) of such activities may be located outside the defined per diem locality.

[4] Federal agencies may submit a request to GSA for review of the costs covered by per diem in a particular city or area where the standard CONUS rate applies when travel to that location is repetitive or on a continuing basis and travelers' experiences indicate that the prescribed rate is inadequate. Other per diem localities listed in this appendix will be reviewed on an annual basis by GSA to determine whether rates are adequate. Requests for per diem rate adjustments shall be submitted by the agency headquarters office to the General Services Administration, Office of Governmentwide Policy, Attn: Travel and Transportation Management Policy Division (MTT), Washington, DC 20405. Agencies should submit their request to GSA no later than 2/27 for the city to be included in the annual review. Agencies should designate an individual responsible for reviewing, coordinating, and submitting to GSA any requests from bureaus or subagencies. Requests for rate adjustments shall include a city designation, a description of the surrounding location involved (county or other defined area), and a recommended rate supported by a statement explaining the circumstances that cause the existing rate to be inadequate. The request also must contain an estimate of the annual number of trips to the location, the average duration of such trips, and the primary purpose of travel to the location.

[5] The standard CONUS rate of $85 ($55 for lodging and $30 for M&IE) applies to all per diem localities in the State of North Dakota.

Note: Recognizing that all locations are not incorporated cities, the term "city limits" has been used as a general phrase to denote the commonly recognized local boundaries of the location cited.

Attachment A to Appendix A of Chapter 301

The FY 2003 lodging rates will not change in the following locations until FPLP contracts are active for these locations:

Huntsville, AL
Montgomery, AL
Phoenix/Scottsdale, AZ
Sierra Vista, AZ
Tucson, AZ
Los Angeles, CA
Monterey, CA
Sacramento, CA
San Diego, CA
San Francisco, CA
Colorado Springs, CO
Washington, DC Metropolitan Area
Jacksonville/Mayport, FL
Savannah, GA
Indianapolis, IN
Kansas City/Overland Park, KS
New Orleans, LA

Annapolis, MD
Baltimore, MD
Columbia, MD
Harford County, MD
Lexington Park/Leonardtown/Lusby, MD
Detroit, MI
Minneapolis/St. Paul, MN
Albuquerque, NM
Cincinnati, OH
Columbus, OH
Oklahoma City, OK
Portland, OR
Harrisburg, PA
Philadelphia, PA
Pittsburgh, PA
Charleston, SC
Memphis, TN
Arlington, TX
Austin, TX
Dallas, TX
El Paso, TX
Ft. Worth, TX
Houston, TX
Killeen, TX
San Antonio, TX
Salt Lake City, UT
Richmond, VA
Virginia Beach, VA
Seattle, WA

Dated: August 27, 2002.

Stephen A. Perry,

Administrator, General Services Administration.

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Federal Register

Friday,
August 30, 2002

Part IX

Office of the United States Trade Representative

Exclusion of Particular Products From Actions Under Section 203 of the Trade Act of 1974 With Regard to Certain Steel Products; Conforming Changes and Technical Corrections to the Harmonized Tariff Schedule of the United States; Notice

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Exclusion of Particular Products From Actions Under Section 203 of the Trade Act of 1974 With Regard to Certain Steel Products; Conforming Changes and Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to authority granted to the United States Trade Representative (USTR) in Presidential Proclamation 7529 of March 5, 2002 (67 FR 10553) and Presidential Proclamation 7576 of July 3, 2002, the USTR has found that particular products should be excluded from actions under section 203 of the Trade Act of 1974 (19 U.S.C. 2253) (Trade Act) with regard to certain steel products, and is modifying subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) as set forth in the annex to this notice to implement these exclusions. Pursuant to authority delegated to the USTR in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415), USTR is making technical corrections to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) as set forth in the annex to this notice. These modifications correct several inadvertent errors and omissions in the subheadings 9903.72.30 through 9903.74.24 of the HTS so that the intended tariff treatment is provided.

EFFECTIVE DATE: The modifications and corrections made in this notice are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in each item in the annex to this notice.

FOR FURTHER INFORMATION CONTACT: Office of Industry, Office of the United States Trade Representative, 600 17th Street, NW., Room 501, Washington DC, 20508. Telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: On March 5, 2002, pursuant to section 203 of the Trade Act of 1974, as amended (the ''Trade Act'') (19 U.S.C. 2253), the President issued Proclamation 7529 (67 FR 10553), which imposed tariffs and a tariff-rate quota on (a) certain flat steel, consisting of: slabs, plate, hot-rolled steel, cold-rolled steel, and coated steel; (b) hot-rolled bar; (c) cold-finished bar; (d) rebar; (e) certain tubular products; (f) carbon and alloy fittings; (g) stainless steel bar; (h) stainless steel rod; (i) tin mill products; and (j) stainless steel wire, as provided for in subheadings 9903.72.30 through 9903.74.24 of the Harmonized Tariff Schedule of the United States (''HTS'') (''safeguard measures'') for a period of three years plus 1 day. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., EST, on March 20, 2002, Proclamation 7529 modified subchapter III of chapter 99 of the HTS so as to provide for such increased duties and a tariff-rate quota. Proclamation 7529 also delegated to the USTR the authority to consider requests for exclusion of a particular product submitted in accordance with the procedures set out in 66 FR 54321, 54322–54323 (October 26, 2001) and, upon publication in the **Federal Register** of a notice of his finding that a particular product should be excluded, to modify the HTS provision created by the annex to that proclamation to exclude such particular product from the pertinent safeguard measure. On April 5, 2002, USTR published a notice in the **Federal Register** excluding four particular products from the safeguard measures, and modified the HTS accordingly. 67 FR 16484. On July 3, the President issued Proclamation 7576, which extended the period for granting exclusions until August 31, 2002. On July 12, 2002, USTR published a notice in the **Federal Register** excluding additional products from the safeguard measures, and modified the HTS accordingly. 67 F.R. 46221.

I have further considered exclusion requests for certain products designated as X–010, X–035, X–037, X–038, X–063, X–068, X–081, X–083, X–090, X–099, X–106, X–142, X–146, X–162, N–300, N–301, N–304, N–305, N–310, N–312, N–314, N–316, N–319, N–320, N–323, N–324, N–325, N–329, N–332, N–333, N–335, N–339, N–346, N–353, N–354, N–355, N–361, N–364, N–372, N–374, N–376, N–378, N–379, N–381, N–387, N–389, N–390, N–395, N–397, N–400, N–406, N–408, N–412, N–414, N–420, N–422, N–424, N–425, N–427, N–428, N–430, N–436, N–437, N–441, N–444, N–449, N–457, N–458, N–459, N–463, N–464, N–465, N–469, N–470, N–472, N–476, N–478, N–479, N–485, N–489, N–494, N–495, N–497, N–520, N–521, N–526, N–529, and N–530. I find that the exclusion from the safeguard measures established in Proclamation 7529 of certain steel products within these designations, as described in the annex to this notice, would not undermine the goals of those safeguard measures. Therefore, I find that these products should be excluded from those safeguard measures. Accordingly, under authority vested in the USTR by Proclamations 7529 and 7576, I modify the HTS provisions created by the annex to Proclamation 7529 as set forth in the annex to this notice. Such modifications shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on the dates indicated in the annex to this notice.

On March 19, 2002, June 4, 2002, and July 12, 2002, USTR published **Federal Register** notices (67 FR 12635, 67 FR 38541, and 67 FR 46221, respectively) making technical corrections to subchapter III of chapter 99 of the HTS to remedy several technical errors introduced in the annex to Proclamation 7529. These corrections ensured that the intended tariff treatment was provided. Since the publication of these **Federal Register** notices, additional technical errors and omissions in subchapter III of chapter 99 have come to the attention of USTR. The annex to this notice makes technical corrections to the HTS to remedy these errors and omissions. In particular, the annex to this notice corrects errors in the descriptions of the physical dimensions or chemical composition of certain products excluded from the application of the safeguard measures.

Proclamation 6969 authorized the USTR to exercise the authority provided to the President under section 604 of the Trade Act of 1974 (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Under authority vested in the USTR by Proclamation 6969, the rectifications, technical and conforming changes, and similar modifications set forth in the annex to this notice shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after the date set forth with regard to each item in the annex to this notice.

Jon M. Huntsman, Jr.,

Deputy United States Trade Representative.

Annex

Subchapter III of chapter 99 of the Harmonized Tariff Schedule (HTS) is modified as set forth in this annex, with bracketed matter included to assist in the understanding of the modifications. The following provisions supersede matter now in the HTS, with the new subheadings being inserted by this notice set forth in columnar format and the material inserted in the HTS columns entitled ''Heading/Subheading'', ''Article Description'', ''Rates of Duty 1 General'', ''Rates of

Duty 1 Special'', and ''Rates of Duty 2'', respectively. The corrections in existing provisions contained in section I of this annex shall be effective (i) on or after March 20, 2002, in the case of HTS provisions effective as of that date, or (ii) in the case of later-adopted HTS provisions, on or after the date of the inclusion in, or of the previous correction of, the individual HTS provision being corrected by this annex, except as indicated in the next sentence. Individual subdivisions of U.S. note 11 to subchapter III of chapter 99 of the HTS set forth in this annex specifying that quantities of the named goods may, after the date of signature of this notice, enter under the terms of such subdivisions and their associated subheadings shall be effective with respect to such goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EDT on September 1, 2002. The other new subdivisions of U.S. note 11(c) and their associated subheadings announced in section II of this annex shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EST, on March 20, 2002.

Section 1. In order to make corrections in existing provisions or to add a newly excluded product or products to existing provisions:

1. Subdivision (a)(ii) of U.S. note 11 is modified by deleting ''flat-rolled'', and by deleting ''or 7226'' and by inserting in lieu thereof '', 7226, 7227 or 7228''.

2. The following modifications are made in subdivision (b) of U.S. note 11:

(A) in subdivision (b)(iv)(C) through (J), at the beginning of the text of each subdivision, the phrase ''products sometimes referred to as (but not limited to)'' is inserted;

(B)(1) in subdivision (b)(vii)(B), ''1.64'' is deleted and ''1.625 mm to 1.655'' is inserted in lieu thereof, and ''19.5'' is deleted and ''19.3 mm to 19.7'' is inserted in lieu thereof;

(2) in subdivision (b)(vii)(C), ''0.975'' is deleted and ''0.955 mm to 0.985'' is inserted in lieu thereof, and ''8.8'' is deleted and ''8.6 mm to 9.0'' is inserted in lieu thereof;

(3) in subdivision (b)(vii)(D), ''1.02'' is deleted and ''1.01 mm to 1.03'' is inserted in lieu thereof, and ''10.7'' is deleted and ''10.5 mm to 10.9'' is inserted in lieu thereof;

(4) in subdivision (b)(vii)(H), ''1.84'' is deleted and ''1.8 mm to 1.88'' is inserted in lieu thereof, and ''43.6 mm or 16.1 mm'' is deleted and ''43.4 mm to 43.8 mm or 16.1 mm to 16.5 mm'' is inserted in lieu thereof;

(5) in subdivision (b)(vii)(I), ''0.97'' is deleted and ''0.95 mm to 0.98'' is inserted in lieu thereof, and ''20'' is deleted and ''19.95 mm to 20''is inserted in lieu thereof;

(C) in subdivision (b)(x), the phrase ''containing, by weight, carbon of between 2.9 and 3.7 percent, silicon of between 1.6 and 2.7 percent, and manganese of between 0.5 and 0.8 percent'' is deleted and ''containing, by weight, carbon of between 2.8 and 4.0 percent, silicon of between 1.6 and 3.1 percent and manganese not over 0.8 percent'', and ''or N–520'' is inserted after ''X–137';

(D) in subdivision (b)(xii), the text beginning with ''containing'' and ending with ''aluminum of 1.00 percent'' is deleted and ''containing (percent by weight): carbon 0.10 to 0.2, manganese 1.3 to 1.7, sulfur 0.08 to 0.2, copper 0.9 to 1.2, silicon 0.2 to 0.5, molybdenum 0.2 to 0.5, nickel 2.5 to 3.5 and aluminum 0.8 to 1.1'' is inserted in lieu thereof; and ''X–134'' is deleted and ''X–134 or N–408'' is inserted in lieu thereof;

(E) in subdivision (b)(xx)(D), ''12 maximum'' is deleted and ''1.5 maximum'' is inserted in lieu thereof;

(F)(1) in subdivision (b)(xxii), ''or N–408'' is inserted after ''X–134'';

(2) in subdivision (b)(xxii)(A), the text beginning with ''composition'' and ending with ''aluminum 1.00 percent'' is deleted and ''composition (percent by weight): carbon 0.1 to 0.2, manganese 1.3 to 1.7, molybdenum 0.2 to 0.5, copper 0.9 to 1.2, silicon 0.2 to 0.5, nickel 2.5 to 3.5 and aluminum 0.8 to 1.1'' is inserted in lieu thereof;

(3) in subdivision (b)(xxii)(B), the text beginning with ''composition'' and ending with ''chromium 2.10 percent'' is deleted and ''composition (percent by weight): carbon 0.1 to 0.2, manganese 1.7 to 1.9, sulfur 0.02 to 0.04, molybdenum 0.3 to 0.6, copper not over 0.1, silicon not over 0.1, phosphorus not over 0.01, nickel not over 0.2 percent, vanadium 0.08 to 0.15 and chromium 1.9 to 2.5'' is inserted in lieu thereof;

(4) in subdivision (b)(xxii)(C), the text beginning with ''composition'' and ending with ''molybdenum 0.80 percent'' is deleted and ''composition (percent by weight): carbon 0.7 to 0.9, manganese 1.2 to 1.5, chromium 0.8 to1.2 and molybdenum 0.6 to 1.0'' is inserted in lieu thereof;

(5) in subdivision (b)(xxii)(D), the text beginning with ''composition'' and ending with ''molybdenum 0.3 percent'' is deleted and ''composition (percent by weight): carbon 0.1 to 0.2, manganese 1.4 to 1.7, copper 0.9 to 1.2, chromium 1.4 to 1.7, aluminum 0.8 to 1.1, silicon 0.2 to 0.5, sulfur 0.1 to 0.4, nickel 2.5 to 3.5 and, molybdenum 0.2 to 0.5'' is inserted in lieu thereof;

(G) in subdivision (b)(xxiii)(C), the words ''not over'' are inserted after ''copper'', and ''niobium (columbium)'' is deleted and ''total content of vanadium and columbium combined'' is inserted in lieu thereof;

(H) in subdivision (b)(xxxii)(E), ''short camber ±0.2997 mm over 1,016 mm, long camber: ±0.7620 mm over 3,048 mm'' is deleted and ''short camber ±0.2997 mm over 1,016 mm longitudinal length, long camber: ±0.7620 mm over 3,048 mm longitudinal length'' is inserted in lieu thereof;

(I) in subdivision (b)(xxxiv)(B), the words ''less than'' are inserted after ''copper'';

(J) in subdivision (b)(xxxiv)(I), ''ksi'' is deleted and ''MPa'' is inserted in lieu thereof;

(K) in subdivision (b)(xlv), the text beginning with ''containing'' and ending with ''nickel'' is deleted and "'with chemical composition (percent by weight): carbon 0.78 to 1.25, silicon 0.10 to 0.65, manganese 11.0 to 14.0, phosphorus not over 0.06, sulfur not over 0.06, chromium not over 0.65, molybdenum not over 0.15, nickel either (i) not over 0.4 or (ii) 1.5 to 2.0, and copper not over 0.35'' is inserted in lieu thereof;

3. The following modifications are made in subdivision (c) of U.S. note 11:

(A) in subdivision (c)(i)(A), the phrase ''entered in an aggregate annual quantity not to exceed 45,000 t during the 12-month period beginning on July 3, 2002 or July 3, 2003 or during the period July 3, 2004 through March 20, 2005, inclusive,'' is deleted;

(B) in subdivision (c)(i)(B), the phrase ''entered in an aggregate annual quantity not to exceed 5,700 t during the 12-month period beginning on July 3, 2002 or July 3, 2003 or during the period July 3, 2004 through March 20, 2005, inclusive,'' is deleted;

(C) in subdivision (c)(i)(C), the phrase ''entered in an aggregate annual quantity not to exceed 17,500 t during the 12-month period beginning on July 3, 2002 or July 3, 2003 or during the period July 3, 2004 through March 20, 2005, inclusive,'' is deleted;

(D) in subdivision (c)(vi)(A), the phrase ''entered in an aggregate annual quantity not to exceed 45,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period September 1, 2004 through March 20, 2005, inclusive,'' is inserted immediately after ''in coils,'';

(E) in subdivision (c)(vi)(B), the phrase ''entered in an aggregate annual quantity not to exceed 5,700 t during the

12-month period beginning on September 1, 2002 or September 1, 2003 or during the period September 1, 2004 through March 20, 2005, inclusive,'' is inserted immediately after ''in coils,'';

(F) in subdivision (c)(vi)(C), ''entered in an aggregate annual quantity not to exceed 17,500 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period September 1, 2004 through March 20, 2005, inclusive,'' is inserted immediately after ''in coils,'';

(G) in subdivision (c)(xv), the phrase ''elongation of minimum 3 percent;'' is inserted before ''continuously'';

(H) in subdivision (c)(xvi)(A), the phrase '', or for micro-alloyed steels for cold upsetting: 19Mn5, 26Mn5, 34Mn5, 40Mn5'' is inserted after ''aluminum at least 0.02'';

(I) in subdivision (c)(xvii), ''X–162'' is deleted and ''X–185'' is inserted in lieu thereof;

(J) in subdivision (c)(xx)(E), ''one-half'' is deleted and ''1.5'' is inserted in lieu thereof;

(K) in subdivision (c)(xxx)(I), the phrase ''1060 N yield strength 580 to 730 N'' is deleted and ''1060 N/mm^2; yield strength 580 to 730 N/mm^2;'' is inserted in lieu thereof;

(L) in subdivision (c)(xxxiii)(A), the phrase ''and inclusions groups or clusters shall not exceed 5 microns in length'' is inserted after ''greater than 1'';

(M) in subdivision (c)(xxxiii)(B) the phrase ''clusters not exceeding 5'' is deleted and the phrase ''clusters shall not exceed 5 microns in length'' is inserted in lieu thereof;

(N) in subdivision (c)(xliv)(C), the phrase ''entered in an aggregate annual quantity not to exceed 36,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive,'' is deleted;

(O) in subdivision (c)(xxxvi)(A), ''0.508 mm'' is deleted and ''0.340 mm'' is inserted in lieu thereof;

(P)(1) in subdivision (c)(xliii), ''or N–408'' is inserted after ''X–134'';

(2) in subdivision (c)(xliii)(A), the text beginning with ''composition'' and ending with ''aluminum 1.00'' is deleted and ''composition (percent by weight): carbon 0.1 to 0.2, manganese 1.3 to 1.7, sulfur 0.08 to 0.2, copper 0.9 to 1.2, silicon 0.2 to 0.5, molybdenum 0.2 to 0.5, nickel 2.5 to 3.5 and aluminum 0.8 to 1.1'' is inserted in lieu thereof;

(3) in subdivision (c)(xliii)(B), the text beginning with ''composition'' and ending with ''aluminum 1.00'' is deleted and ''composition (percent by weight): carbon 0.1 to 0.2, manganese 1.3 to 1.7, molybdenum 0.2 to 0.5, copper 0.9 to 1.2, silicon 0.2 to 0.5, nickel 2.5 to 3.5 and aluminum 0.8 to 1.1'' is inserted in lieu thereof;

(4) in subdivision (c)(xliii)(C), the text beginning with ''composition'' and ending with ''molybdenum 0.3'' is deleted and ''composition (percent by weight): carbon 0.1 to 0.2, manganese 1.4 to 1.7, copper 0.9 to 1.2, chromium 1.4 to 1.7, aluminum 0.8 to 1.1, silicon 0.2 to 0.5, sulfur 0.1 to 0.4, nickel 2.5 to 3.5, and molybdenum 0.2 to 0.5'' is inserted in lieu thereof;

(5) in subdivision (c)(xliii)(D), the text beginning with ''composition'' and ending with ''chromium 2.10'' is deleted and ''composition (percent by weight): carbon 0.1 to 0.2, manganese 1.7 to 1.9, sulfur 0.02 to 0.04, molybdenum 0.3 to 0.6, copper not more than 0.1, silicon not more than 0.1, phosphorus not more than 0.01, nickel not more than 0.2 percent, vanadium 0.08 to 0.15 and chromium 1.9 to 2.5'' is inserted in lieu thereof;

(6) in subdivision (c)(xliii)(E), the text beginning with ''composition'' and ending with ''molybdenum 0.80'' is deleted and ''composition (percent by weight): carbon 0.7 to 0.9, manganese 1.2 to 1.5, chromium 0.8 to1.2 and molybdenum 0.6 to 1.0'' is inserted in lieu thereof;

(Q)(1) in subdivision (c)(xlvii)(A), the phrase ''tensile strength 724 N/mm^2'' is deleted and ''tensile strength greater than or equal to 689 N/mm^2'' is inserted in lieu thereof;

(2) in subdivision (c)(xlvii)(B), the phrase ''tensile strength 724 N/mm^2'' is deleted and ''tensile strength greater than or equal to 689 N/mm^2'' is inserted in lieu thereof;

(R) in subdivision (c)(lv), the phrase ''and entered in an aggregate annual quantity not to exceed 75,000 t during the 12-month period beginning on July 3, 2002 or July 3, 2003 or during the period July 3, 2004 through March 20, 2005, inclusive;'' is deleted and a comma is inserted after ''X–100'';

(S) in subdivision (c)(lxiii), the word ''and'' is deleted before ''exposed'', the phrase ''; with the eluted volume of the coating less than 100 mg'' is deleted, and '', and the eluted volume of the coating is less than 100mg'' is inserted in lieu thereof;

(T) in subdivision (c)(lvi), the words ''or similar product'' are inserted after ''''RAMAX S''''; ''chromium 16.2 to 17.0'' is deleted and ''chromium 15.2 to 17.0'' is inserted in lieu thereof; and ''nitrogen 0.10'' is deleted and ''nitrogen 0.07'' is inserted in lieu thereof; and ''type D: T .0'' is deleted and ''type D: t 2.0'' is inserted in lieu thereof;

(U) in subdivision (b)(xxv)(B), ''250 t'' is deleted and ''600 t'' is inserted in lieu thereof; and subheading 9903.72.97 is modified by deleting ''250 t'' and inserting in lieu thereof, ''600 t'',

(V) subdivision (lxxiii) is modified to read as follows:

(lxxiii) Flat-rolled products, designated as X–048, N–316 or N–472 and meeting the characteristics described below:

(A) coated with zinc-aluminum allow consisting of 95 percent zinc and 6 percent aluminum by weight, sometimes referred to as (but not limited to) products known as ''Ragal Galfan'; thickness not over 0.75 mm; width 1,220 mm or more;

(B) coated with hot dipped 95 percent zinc/5 percent aluminum/trace mischmetal alloy coating; sometimes referred to as (but not limited to) products known as ''Galfan''; thickness 0.4572 mm to 1.4224 mm; with coating of GF 30, produced in accordance with ASTM A–875;

(C) ASTM A875 DDS interstitial-free (IFS) boron-treated for antibrittleness; yield strength 220 MPa maximum; tensile strength 270 to 350 MPa; elongation 34 percent minimum in a standard ASTM sample; with chemical composition (percent by weight): carbon not over 0.004, manganese 0.80 to 0.20, boron 0.0002 to 0.0006, aluminum 0.01 to 0.07, phosphorus not over 0.015 and sulfur not over 0.020; sometimes referred to as (but not limited to) products known as ''Galfan''; or

(D) ASTM A875 interstitial-free (IFS); yield point 230 MPa minimum; tensile strength 325 to 400 MPa; elongation 34 percent minimum in a standard ASTM sample; Langford coefficient (n) 0.17; minimum anisotropy ratio (r) 1.5 minimum in transverse direction; with chemical composition (percent by weight): carbon not over 0.009, titanium 0.050 or greater and phosphorus 0.02 to 0.04; sometimes referred to as (but not limited to) products known as ''Galfan'',''

3. Subheading 9903.72.31 is modified by inserting ''or N–520'' after ''X–137''.

4. Subdivision (c)(lxviii) of U.S. note 11 is modified by inserting after ''N–319'' the phrase ''and entered in an aggregate quantity not to exceed 10 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, inclusive'', and the article description of subheading 9903.77.32 is modified by inserting at the end thereof ''and entered in an aggregate quantity not to exceed 10 t during a period specified in such note''.

5. The superior text to subheadings 9903.73.42 through 9903.73.52 is modified by deleting from the

enumeration of HTS subheadings the following numbers: ''7227.90.10, 7227.90.20,'' ''7228.30.20,'' and ''7228.60.10,''.

6. The superior text to subheadings 9903.73.55 through 9903.73.62 is modified by deleting ''7228.50.10,'.

7. The article description of subheading 9903.74.62 is modified by deleting ''11(c)(vi)'' and by inserting in lieu thereof ''11(c)(vi)(A)'', and is further modified by inserting at the end thereof '', and entered in an aggregate quantity during a time period specified in such note not to exceed 45,000 t''.

8. Subheading 9903.74.73 is modified by deleting ''750'' and by inserting in lieu thereof ''6,500''.

9. The following new provisions are inserted in numerical sequence:

	[Goods. . .:]			
''9903.74.82	Enumerated in U.S. note 11(c)(vi)(B) to this subchapter and entered in an aggregate quantity during a time period specified in such note not to exceed 5,700 t.	No change	No change	No change
9903.74.83 ...	Enumerated in U.S. note 11(c)(vi)(C) to this subchapter and entered in an aggregate quantity during a time period specified in such note not to exceed 17,500 t.	No change	No change	No change''

10. Subheading 9903.75.33 is modified by deleting from the article description '', and entered in an aggregate annual quantity not to exceed 45,000 t''.

11. Subheading 9903.75.34 is modified by deleting from the article description '', and entered in an aggregate annual quantity not to exceed 5,700 t''.

12. Subheading 9903.75.35 is modified by deleting from the article description '', and entered in an aggregate annual quantity not to exceed 17,500 t''.

13. Subdivision (c)(xxi) of U.S. note 11 is modified by inserting after ''N–319'' the phrase ''and entered in an aggregate annual quantity not to exceed 50 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive'', and the article description of subheading 9903.76.86 is modified by inserting at the end thereof ''and entered in an aggregate annual quantity not to exceed 50 t during a time period specified in such note''.

14. Subdivision (d) of U.S. note 11 is modified by inserting the following new paragraph:

''(iv) For purposes of the superior text to subheadings 9903.74.18 through 9903.74.24, the phrase ''products of Canada'' shall be deemed to include stainless steel wire, not shaved or peeled and certified by the importer as having been drawn and annealed in Canada from stainless steel wire rod, and such wire shall be excluded from the additional duties set forth in subheadings 9903.74.22 through 9903.74.24.''

15. The superior text to subheadings 9903.73.88 through 9903.73.95 is modified by inserting after ''fittings'' the phrase '', other than hydraulic fittings,''.

16. The superior text to subheadings 9903.73.97 through 9903.74.06 is modified by inserting after ''sections of stainless steel'' the phrase '', other than such goods with any linear dimension of 80 mm or greater when measured through a solid portion of the cross section''.

Section II. In order to accord additional exclusions from the proclaimed import relief:

1. U.S. note 11(c) is modified by adding at the end thereof the following new subdivisions:

''(lxxx) Cold-finished free-cutting steel bars, turned and polished, the foregoing with a diameter of 146.05 mm or more but not over 355.6 mm, meeting specifications ASTM A29/A108, and designated as N–424;

(lxxxi) Hexagonal section cold-finished bar, designated as N–424, measuring 57.15 mm or more but not over 101.6 mm when measured across section between flat sides; containing less than 0.60 percent carbon by weight; and meeting ASTM A29/A108;

(lxxxii) Cold-finished bars of iron-based alloy, designated as N–479; the foregoing being directly cast thin ribbon with amorphous microstructure; with chemical composition (percent by weight): silicon 5 to 12, copper 0.5 to 2, niobium (columbium) or molybdenum 3 to 7, boron 1 to 2 and nickel or cobalt 0.0 to 10; material thickness between 0.01and 0.04 mm;

(lxxxiii) Cold-rolled flat-rolled products, in coils, designated as N–314; the foregoing draw quality; meeting QS 9000; with thickness 0.5 mm to 4.0 mm; width 670 mm +/-0.127; with chemical composition (percent by weight): carbon 0.47 or more but not over 0.55, manganese 0.60 or more but not over 0.90, silicon not over 0.20, phosphorus not over 0.02 and sulfur not over 0.020; aluminum killed (fine grain practice), vacuum degassed; inclusion content (sulfides, alumina, silicates and oxides) to be no greater than rating #2 thin series per ASTM E 45; no heavy inclusions permitted; micro structure fine pearlite with no over 30 percent proeutectoid ferrite and no carbide ferrite banding; grain size #5 or finer per ASTM E 112; surface decarburization not over 0.0254 mm; [demonstrated to be free of defects detrimental to: in press drawing, forming and heat treating to customer specified tolerances];

(lxxxiv) Cold-rolled flat-rolled products, designated as N–422; with thickness 0.85 mm or more but not over 1.98 mm, width 15 mm ±0.03 mm; with chemical composition (percent by weight): carbon 0.50 to 0.55, silicon 0.20 to 0.35, manganese 0.80 to 1.1, phosphorus not over 0.02, sulfur not over 0.01, chromium 1.0 to 1.2, aluminum not over 0.035 and vanadium 0.1 to 0.2; carbides fully spheroidized size CG 2.2 to 2.3; perlite content 3.0 (according to SEP 1520); percentage purity is M less than or equal to 3; edge oxidation less than 0.02 mm; surface free from pits, scratches, rust, cracks or seams; edge burrs oriented in one direction only; produced in basic oxygen furnace;

(lxxxv) Cold-rolled flat-rolled products, designated as N–489; with chemical composition (percent by weight): carbon 1.20 to 1.30, manganese 0.20 to 0.35, phosphorus not over 0.02, sulfur not over 0.003, silicon 0.15 to 0.35 and chromium 0.30 to 0.50; slit, deburred and annealed edges; straightness 9.5 mm maximum in 2440 mm; coil set 254 mm maximum in 920 mm; and microstructure with fully spheroidized carbides of uniform size and distribution;

(lxxxvi) Hollow drill bars and rods, designated as N–332, the foregoing of any cross-section of which the greatest external dimension of the cross-section exceeds 15 mm but does not exceed 52 mm and of which the greatest internal dimension does not exceed one half of the greatest external dimension; meeting any of the following chemical compositions (percent by weight):

(A) carbon 0.21 to 0.26, silicon 0.15 to 0.35, manganese 0.55 to 0.75, phosphorus not over 0.025, sulfur 0.01 to 0.025, chromium 1.2 to 1.4, nickel 2.5

to 2.9 and copper not over 0.2; known commercially as ''Bedrock 2725'';

(B) carbon 0.73 to 0.78, silicon not over 0.25, manganese not over 0.3, phosphorus not over 0.04, sulfur not over 0.04, chromium not over 0.2, nickel not over 0.2, molybdenum not over 0.1 and copper not over 0.25; known commercially as ''Bedrock 7378'';

(C) carbon 0.22 to 0.25, silicon 0.2 to 0.35, manganese 0.4 to 0.65, phosphorus not over 0.025, sulfur 0.01 to 0.025, with combined phosphorus and sulfur not over 0.04, chromium 3.0 to 3.5, nickel not over 0.2, molybdenum 0.3 to 0.5 and copper not over 0.25; known commercially as ''Bedrock 3350'';

(D) carbon 0.95 to 1.05, silicon not over 0.3, manganese 0.25 to 0.35, phosphorus not over 0.025, sulfur 0.01 to 0.025, chromium 0.9 to 1.05, nickel not over 0.25, molybdenum 0.2 to 0.3 and copper not over 0.25; known commercially as ''Bedrock 1130''; or

(E) carbon 0.35 to 0.4, silicon 0.1 to 0.3, manganese 0.7 to 0.9, phosphorus not over 0.04, sulfur not over 0.04, chromium not over 0.2, nickel not over 0.4, molybdenum not over 0.15 and copper not over 0.3; known commercially as ''Bedrock 3540'';

(lxxxvii) Hot-rolled products, designated as N–354, with thickness from 10 mm to 19 mm; width from 98 mm to 118 mm; with chemical composition (percent by weight): carbon 0.28 to 0.33, manganese 0.45 to 0.65, silicon 0.55 to 0.75, phosphorus not over 0.025, sulfur not over 0.025, chromium 1.00 to 1.24, molybdenum 0.40 to 0.60, vanadium 0.20 to 0.30, nickel not over 0.25 and copper not over 0.25; spherodize annealed, descaled; hardness of 86 to 96 HRB; grain size ASTM 4.5 or finer with occasional grains as large as 3 permissible, as determined using ASTM E112, decarburization (sub and partial) determined using ASTM E1077; aircraft quality conforming to AMS 2301 and free from injurious imperfections such as laminating, segregation and surface defects; produced by basic oxygen or electric furnace process, killed, treated with rare earths or calcium-silicon; flatness: for up to 12.7 mm thick, less than 6.35 mm in 3048 mm; for 12.7 mm to 15.9 mm thick, less than 12.7 mm in 3658 mm; or for 15.9 mm to 25.4 mm thick, less than 25.4 mm in 3048 mm;

(lxxxviii) Hot-rolled miniature railroad rails, designated as N–379, having the following dimensions: height 25.3 mm ±0.5 mm; width of base 23.8 mm ±0.5 mm; width of head 12.5 mm ±0.3 mm; radius of crown on head 47.6 mm ±0.5; web thickness at thinnest 2.8 mm; AISI grade 1015 steel;

(lxxxix) Hot-rolled bars, designated as N–424, in the following grades and dimensions:

(A) free-cutting grade AISI C12L14, half-round profiles, measuring 77.8 mm by 39.7 mm, with a tolerance of ±1.5 mm on all cross-sectional dimensions;

(B) ASTM A36 half-oval profiles, containing less than 0.6 percent carbon by weight; measuring 50.8 mm by 12.7 mm with a tolerance of ±1.5 mm on all cross-sectional dimensions;

(C) SAE 4140 alloy steel, with rectangular profile measuring 34.93 mm by 28.58 mm with a tolerance of ±1.5 mm; hardened and tempered; eddy current crack inspected;.

(D) ASTM A36 half-round profiles, containing less than 0.06 percent carbon by weight; measuring 50.8 mm by 25.4 mm with a tolerance of ±1.5 mm on all cross-sectional dimensions;

(E) ASTM A36 half-round profiles, containing less than 0.6 percent carbon by weight; measuring 40 mm by 20 mm with a tolerance of ±1.5 mm on all cross-sectional dimensions;

(F) triangular type special bar shapes, with two sides each 31.8 mm in length, with one sharp corner and two blunt corners with 6.35 mm flat points, and a tolerance of ±1.5 mm on all cross-sectional dimensions;.

(G) special bar shapes of rectangular type cross section, containing by weight less than 0.25 percent of carbon; with an overall width of 82.55 mm and maximum thickness of 32.0 mm; with one long face having a flat surface and the opposite face having a tapered surface with an indent 8mm deep at one end; having one side face at 90 degrees to one long flat surface and the other side face angled at 6 degrees to the plain surface, and with four external corners and one internal corner each having a radius of 3 mm maximum, and a tolerance of ±1.5 mm on all cross-sectional dimensions and a tolerance of plus or minus 2 degrees on all angles;

(H) ASTM A36 half-round profiles, containing less than 0.6 percent carbon by weight; in size 63.5 mm by 31.8 mm with a tolerance of ±1.5 mm on all cross-sectional dimensions; or

(I) ASTM A36 half-round profiles, containing less than 0.6 percent carbon by weight; in size 76 mm by 38 mm with a tolerance of ±1.5 mm on all cross-sectional dimensions;

(xc) Hot-rolled flat-rolled products, designated as X–142 and meeting the characteristics described below:

(A) having a width greater than 914 mm and certified by the importer to meet specification JIS SCM 435;

(B) having a width greater than 915 mm; with chemical composition (percent by weight): carbon 0.23 to 0.33, manganese 0.40 to 0.60, silicon 0.15 to 0.35, phosphorus not over 0.030, sulfur not over 0.040, chromium 0.80 to 1.10 and molybdenum 0.15 to 0.25 (modified SAE 4130); hardness: HRB 90 maximum;

(C) having a width greater than 914 mm; with chemical composition (percent by weight): carbon 0.33 to 0.38, manganese 0.60 to 0.90, silicon 0.15 to 0.30, phosphorus not over 0.030, sulfur not over 0.030, chromium 0.90 to 1.25 and molybdenum 0.15 to 0.25 (modified SAE 4135);

(xci) Hot-rolled flat-rolled products, designated as N–320, certified by the importer as rolled from slab continuously cast with electromagnetic stirring, with hydrogen content of not over 2 ppm and rolling reduction ratio of not less than 5:1; having a thickness 30 mm to 120 mm; fully soft annealed with maximum surface hardness of 300 Brinnell, meeting either of the following chemical compositions (percent by weight):

(A) nickel 0.2 to 0.3, carbon 0.25 to 0.28, silicon 0.60 to 0.80, manganese 0.80 to 1.00, phosphorus not over 0.010, sulfur not over 0.010, chromium 0.80 to 1.00, molybdenum 0.30 to 0.35 and boron 0.001 to 0.005; or

(B) nickel 1.10 to 1.15, carbon 0.25 to 0.28, silicon 0.60 to 0.80, manganese 0.80 to 1.00, phosphorus not over 0.010, sulfur not over 0.010, chromium 0.80 to 1.00, molybdenum 0.30 to 0.35 and boron 0.001 to 0.005;

(xcii) Semifinished products, designated as X–106, X–037 or N–355 and entered in an aggregate quantity not to exceed 250,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; containing by weight 0.001 to 0.005 percent of carbon; containing titanium and/or niobium (columbium) to stabilize carbon nitrogen and sulfur; thickness from 200 mm to 250 mm; width from 760 mm to 2135 mm; and length from 4.2 meters to 12 meters;

(xciii) Semifinished products of nonalloy and alloy interstitial free (IF) steel, designated as N–430 and entered in an aggregate quantity not to exceed 250,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing containing by weight less than 0.015 percent carbon; width from 939 mm to 1651 mm, certified for use during the process of blast furnace relining, including the removal and replacement of substantially all refractories on a blast furnace;

(xciv) Welded cold-finished drawn-over-mandrel tubing, designated as N–458; the foregoing certified by the importer to meet DIN2392–C–ST37–2 BK; with outside diameter from 15 mm to 22 mm (+0.16 mm); inside diameter from 13 mm to 20 mm (+0.05 mm); wall thickness not to exceed 1.3 mm; with chemical composition (percent by weight): carbon 0.10 to 0.18, manganese 0.45 or more, phosphorus not over 0.035, sulfur not over 0.035 and aluminum 0.020 or more; tensile strength 450 to 600 N/mm^2; elongation greater than 8 percent; surface finish of Rmax 3µm or less; delivered in 4 m to 7 m random lengths; plain ends; unmachined; internally and externally oiled to prevent corrosion;

(xcv) Cold-finished round bars, designated as N–325 and entered in an aggregate quantity not to exceed 1,472 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing quenched, tempered and stress relieved; meeting ASTM A–320 L7; of a diameter from 12.7 mm to 44.44 mm;

(xcvi) Cold drawn flat bars, designated as N–425; of grade C1018; containing not over 0.25 percent by weight of carbon; not further worked than cold drawn, thickness from 3.17 mm to 12.7 mm; width 12.7 mm to 50.8 mm; meeting ASTM A29/A108;

(xcvii) Bright polish doctor blade steel, designated as N–305, with thickness between 0.152 mm and 0.254 mm; width between 12.7 mm and 63.5 mm; with chemical composition (percent by weight): carbon 0.95 to 1.05, silicon 0.20 to 0.35, manganese 0.20 to 0.50, phosphorus not over 0.015, sulfur not over 0.015 and chromium 0.05 to 0.15; microstructure with uniform distribution of spherical carbides greater than 140,000 pieces/mm^2; maximum particle size between 1.0 and 1.5 micrometers; tensile strength 1960 =/ −100 N/mm^2; bright polish surface finish free from pits, rust, cracks, and scratches; edge treatments: lamella edge with thickness tolerance within 0.003 mm, beveled edges with angle from 5 to 15 degrees and rounded edges on both edges of the blade.

(xcviii) Cold-rolled flat-rolled products, designated as N–316, the foregoing in coils; continuous annealed; center line thickness tolerance of ±3 percent; nitrogen content not exceeding 0.005 percent by weight; electron beam texturing (''EBT'') finish; maximum surface carbon after power wash of 4 mg/m^2 per side; with either:

(A) Composition of grade known commercially as DSE 220; yield strength 220 to 270 MPa; tensile strength 320 to 370 MPa; minium elongation 35 percent on standard ASTM sample; or

(B) hardness of HRB 50 to 65 and of grade ASTM 1008;

(xcix) Cold-rolled flat-rolled measuring tape steel products, designated as N–400, the foregoing of SAE 1095; with chemical composition (percent by weight): carbon 0.98 to 1.05, silicon 0.15 to 0.30, manganese 0.4 to 0.6, sulfur less than 0.005, phosphorus less than 0.2, aluminum less than 0.01, chromium 0.15 to 0.4, copper less than 0.15 and nickel less than 0.15; width 12.7 mm or more but not over 508 mm, thickness 0.1143 mm or more but not over 0.1422 mm with thickness tolerance: ±0.005 mm; edges deburred, with:

(A) Tensile strength 1,000 to 1,100 N/mm^2

(B) Hardened and tempered and with Vickers hardness from 580 to 650;

(c) Cold-rolled flat-rolled products, designated as N–478, the foregoing with bright finish; thickness 0.096 mm or more but not over 1.145 mm; width 6.3 mm or more but not over 38.5 mm; maximum edge burr 0.005 mm; straightness 6.35 mm in 2,440 mm length; maximum camber; with chemical composition (percent by weight): carbon 0.98 to 1.05, silicon 0.15 to 0.30, manganese 0.3 to 0.6, sulfur not over 0.005, phosphorus not over 0.02, aluminum not over 0.01, chromium 0.15 to 0.4, copper not over 0.15 and nickel not over 0.15; microstructure carbides fully spheroidized and uniform in size and distribution; average carbide size #1 to #2, with occasional maximum carbide size of #3; pursuant to industry standard chart for band blades (Fagersta Bruks AG or Crucible Steel Co chart); no graphitization; no segregation banding; inclusion content as defined in ASTM E–45, plate 1; less dense than category #2 when the sample is viewed in the as-rolled direction; partial decarburization not to exceed 0.0077 mm on one side and uniform on both sides of the strip; no total decarburization;

(ci) Cold-rolled soft magnetic crystalline strip; the foregoing an iron based alloy with approximately 30 percent by weight nickel; thickness between 0.9 mm and 1.2 mm; the foregoing designated as N–479;

(cii) Cold-rolled flat rolled measuring tape steel, designated as N–494, the foregoing with chemical composition (percent by weight): carbon 0.48 to 0.55, manganese 0.60 to 0.90, phosphorus not over 0.040 and sulfur not over 0.050; fully hardened, fully tempered martensite with small iron carbides; hardness Rockwell C 50 to 53; no ferrite islands nor surface decarburation; surface finish silver in color; free from pits, scratches, rust, cracks, or seams; smooth edges with no burr; edge camber of less than 3.175 mm in any 6.096 meters, with such product:

(A) flat and either—

(I) having a thickness equal to 0.11429 mm ±0.00279 mm; width of 9.5249 mm (plus 0 minus 0.22097 mm) or 12.7 mm (plus zero, minus 0.22097 mm) or 19.0499 mm (plus zero, minus 0.22097 mm); or

(II) having a thickness equal to 0.12954 mm ±0.0027939 mm; width of 12.7 mm (plus zero, minus 0.22097 mm) or 19.0499 mm (plus zero, minus 0.22097 mm); or

(B) curved with a concave form the entire length of the coil with 13 mm radius (plus 2 mm, minus 1 mm), for 70 degrees of width (plus 5 degrees, minus 2 degrees), ending with flat on both edges for 4.76 mm (±0.13 mm) by 5.10 mm (±0.13 mm) and either—

(I) having a thickness equal to 0.114299 mm ±0.0027939 mm and width of 25.4 mm (plus zero, minus 0.220979 mm); or

(II) having a thickness equal to 0.12954 mm ±0.0027939 mm and width of 25.4 mm (plus zero, minus 0.220979 mm);

(ciii) Electrogalvanized flat-rolled products, with thickness 2.0 mm or more; with zinc coating on one side; of GM 6201M grade 3, DDS; the foregoing designated as N–316;

(civ) Flat-rolled products, designated as N–346 and entered in an aggregate quantity not to exceed 3,000 t; the foregoing coated with aluminum; thickness from 0.40 to 3.00 mm; width 600 to 1,320 mm; with chemical composition (percent by weight): carbon not over 0.02, manganese not over 0.40, phosphorus not over 0.02, sulfur not over 0.02, copper not over 0.20, nickel not over 0.20, chromium not over 0.15, molybdenum not over 0.06 and titanium 0.05 to 0.30; yield strength 120 to 180 N/mm^2 and maximum tensile strength 330 N/mm^2;

(cv) Forged bars, designated as N–312; the foregoing with thickness from 52 mm to 1,270 mm; width up 2,500 mm; length up to 5,000 mm; of the alloy commercially known as ''2738 Thruhard Supreme'' with typical chemical analysis (percent by weight): carbon 0.26, silicon 0.05, manganese 1.45, sulfur 0.002, chromium 1.25, nickel 1.05, molybdenum 0.50 and vanadium 0.10; hardness 280 to 355 BHN;

(cvi) Angles, U-sections and I-beam sections, designated as N–319 and entered in an aggregate quantity not to exceed 5 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period

from September 1, 2004 through March 20, 2005, inclusive; the foregoing in metric sizes only; not further worked than hot-rolled, hot drawn, or extruded; with a chemical composition (percent by weight): not over 0.22 carbon, not over 1.6 manganese, not over 0.55 silicon, not over 0.05 sulfur and the remainder iron; meeting the characteristics described below:

(A) angles in metric sizes, measuring from 6,000 mm to 12,000 mm in length, from midpoint along each arm joined at a 90-degree angle; web thickness from 3 mm to 7 mm; width from 25 mm to 80 mm along the entire angle;

(B) U-sections in metric sizes, each with a center-bottom piece with thickness from 6.4 mm to 7.6 mm and width from 25 mm to 76 mm; joined along the entire length of both long sides to horizontal pieces at a 90-degree angle; with such horizontal pieces, of a width from 25 mm to 76 mm and thickness from 6.4 mm to 7.6 mm, protruding from the center-bottom piece in such a manner that the outside of each side piece is flush with the outside of the center-bottom piece to produce a frontal view of a squared-off ''U'' with the width of the entire shape equaling the width of the center-bottom piece; or

(C) I-beam sections in metric sizes, with a vertical center piece measuring 80 mm in height and with thickness from 3.8 mm to 5.2 mm; joined along the entire length of the top of both long sides to the mid-lines of the interior faces of the horizontal pieces at 90-degree angles; each horizontal piece, with width from 46 mm to 55 mm and thickness from 3.8 mm to 5.2 mm, protruding from the center piece in such a manner that the inside of each horizontal piece is flush with the outside top of the center piece to produce a frontal view of an ''I'' with the height of the entire shape equaling thewidth of the center piece added to the thickness of both side pieces, totaling less than 80 mm; length from 6 m to 12 m;

(cvii) Hot-rolled bars and rods, designated as N–395 and entered in an aggregate quantity not to exceed 15,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing whether in coils or in straight lengths, not further worked than hot-rolled, of free cutting AISI grade 12L14; commercially designated as ''XLCUT''; containing by weight over 0.23 percent but less than 0.35 percent lead in controlled dispersion to prevent lead stringers; certified by importer to have had a reduction ratio of a minimum of 150:1 achieved through continuous bloom casting at either 560 x 400 mm, or 750 x 355 mm; fully surface inspected and certified by the producer to be free from defects deeper than 2 percent of bar diameter/section; certified free from mixes, achieved by 100 percent spectrometer testing of bar product;

(cviii) Bars of grade SAE 4140, not further worked than hot rolled, designated as N–424, with one of the following cross sections:

(A) nonstandard trapezoidal type bar shapes, having a shortest face length of 37.27 mm; with two sides angled at 15 degrees 10 minutes and thickness of 23.18 mm; with tolerances of ±1.5 mm being on all cross sectional dimensions and ±2 degrees on all angles;

(B) nonstandard triangular type special bar shapes, with cross-sectional shape being a segment of a circle; described by a radius of length 42.8 mm and an inclusive angle of 45 degrees; with tolerances of ±1.5 mm on all cross sectional dimensions and ±2 degrees on all angles; suitable for cold drawing;

(C) nonstandard special trapezoidal type bar shapes, having a shortest face length of 34.1 mm; with two sides angled at 15 degrees, and a thickness of 23.16 mm; with tolerances of ±1.5 mm on all cross sectional dimension and ±2 degrees on all angles; or

(D) nonstandard triangular type special bar shapes, with cross-sectional shape being a segment of a circle, described by a radius of length 50.698 mm and an inclusive angle of 45 degrees; with tolerances of ±1.5 mm on all cross sectional dimensions and ±2 degrees on all angles; suitable for cold drawing;

(cix) Hot-rolled flat-rolled products, designated as N–301, the foregoing pickled and oiled; cut-to-length; spherodize annealed; thickness from 8.50 mm to 10.00 mm with a tolerance of ±0.1524 mm; width from 175 mm to 385 mm; mill edge; lengths less than or equal to 2,540 mm; with chemical composition (percent by weight): carbon 0.65 to 0.70, manganese 0.35 to 0.50, silicon 0.20 to 0.35, phosphorus 0.25 maximum, sulphur 0.25 maximum, chromium 0.45 to 0.60, nickel 0.55 to 0.75 and molybdenum 0.15 to 0.25;

(cx) Hot-rolled flat-rolled products, designated as N–316; the foregoing of high strength low alloy grade 80 wide steel with the following characteristics: yield strength of 550 to 650 MPa; tensile strength of 620 to 750 MPa; elongation not less than 16 percent; guaranteed bending radius of 0.8 times a thickness less than 6 mm or 1.5 times a thickness greater than 6mm; guaranteed minimum Charpy V test of 39 Joules at −20 °C (−4 °F); thickness from 7.91 mm to 15.88 mm; width from 1.83 m to 2.13 m; with chemical composition (percent by weight): carbon not over 0.10, manganese not over 1.7, phosphorus not over 0.025, sulfur not over 0.01, silicon not over 0.4, aluminum from 0.02 to 0.06; niobium (columbium) not over 0.08, molybdenum not over 0.3 and vanadium not over 0.15;

(cxi) Hot-rolled flat-rolled products, designated as N–316 and entered in an aggregate quantity not to exceed 7,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing of temper passed grade A1001CSB/1008 CQ; thickness from 1.37 mm to 1.53 mm; width over 1,500 mm; yield strength of 179 to 340 MPa; maximum tensile strength of 440 MPa; minimum elongation of 28 percent; with chemical composition (percent by weight): carbon not over 0.1, manganese not over 0.5, phosphorus not over 0.03, sulfur not over 0.03, silicon not over 0.03, copper not over 0.04, nickel not over 0.04, chromium not over 0.04 and aluminum content over 0.01;

(cxii) Hot-rolled flat-rolled products, designated as N–316; the foregoing meeting SAE J1392 080XLF; thickness 2.54 mm to 5.08 mm; width 1,016 mm to 1,524 mm; with chemical composition (percent by weight): carbon not over 0.12, manganese not over 1.9, phosphorus not over 0.025, sulfur not over 0.015, silicon not over 0.5, aluminum content of 0.01 to 0.04, titanium not over 0.22, niobium (columbium) not over 0.09, molybdenum not over 0.5 and vanadium not over 0.2; yield strength not less than 621 MPa; tensile strength not less than 689 MPa; elongation not less than 14 percent; and guaranteed bending radius of 0.8 times a thickness less than 6 mm and 1.5 times a thickness greater than 6 mm;

(cxiii) Hot-rolled flat-rolled products, designated as N–463; the foregoing with thickness 1.9 mm or more but not over 3.01 mm; width over 254 mm but not over 343 mm; with one of the following chemical compositions (percent by weight):

(A) carbon 1.21 to 1.35, manganese 0.15 to 0.35, phosphorus not over 0.025, sulfur not over 0.010, silicon 0.15 to 0.25, chromium 0.10 to 0.30, copper not over 0.15 and aluminum not over 0.015;

(B) carbon 0.56 to 0.64, manganese 0.75 to 1.00, phosphorus not over 0.025, sulfur not over 0.010, silicon 1.80 to 2.20, chromium 0.25 to 0.60 and aluminum 0.02 to 0.06; or

(C) carbon 1.10 to 1.25, manganese 0.20 to 0.40, phosphorus not over 0.030,

sulfur not over 0.007, silicon 0.15 to 0.30, chromium 0.50 to 0.80 and vanadium 0.07 to 0.12;

(cxiv) Hot-rolled flat-rolled products, designated as N–529; the foregoing with thickness 3 mm to 4.75 mm; with chemical composition (percent by weight): carbon 0.20 to 0.30, manganese 0.80 to 1.0, nickel 3.25 to 4.00, chromium 1.25 to 2.00 and molybdenum 0.25 to 0.50; known commercially as ''Astralloy V TM'';

(cxv) Hot-rolled flat-rolled products, designated as X–083 and entered in an aggregate quantity not to exceed 20,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing in-line temper-passed and tension-leveled; pickled and oiled; of surface critical steel in grade A1011 CS B 1008 CQ; thickness from 1.7 mm to 7.59 mm; width from 1,000 mm to 2,135 mm; yield strength 241 MPa to 310 MPa; tensile strength 345 MPa to 414 MPa; with chemical composition (percent by weight): carbon 0.06 to 0.08, manganese 0.25 to 0.35, phosphorus not over 0.02, sulfur not over 0.008, silicon not over 0.02, aluminum 0.02 to 0.05, copper not over 0.025, nickel not over 0.03 and chromium not over 0.04, with the combined total of silicon and phosphorus less than 0.09; in coils; certified by the importer to have (I) flatness guarantee of 4 international units before and after laser cutting in sheets or blanks when using appropriate leveling practice on the cut-to-length equipment, (II) surface quality defined by a guarantee on level of defect and appearance AS and a surface quality guarantee of no visible defect (defects include blemishes due to roll marks, pits, rolling scale and scratches) after painting for both sides of A flat panel, and (III) surface with a typical whiteness value of 70 ± 5 on scale L * (reference CIE 1976 L *, a *, b *);

(cxvi) Hot-rolled flat-rolled products, designated as X–083 and entered in an aggregate quantity not to exceed 10,500 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing with chemical composition (percent by weight): carbon 0.10 to 0.20, manganese 0.50 to 1.00, phosphorus not over 0.02, sulfur not over 0.005, silicon 0.20 to 0.50, chromium 0.40 to 0.70, copper 0.05 to 0.40, nickel 0.05 to 0.30, molybdenum not over 0.50 and vanadium not over 0.02, with iron as the only remaining input; minimum tensile strength 517 MPa, minimum yield strength 379 MPa; minimum elongation 29 percent;

(cxvii) Hot-rolled flat-rolled products, designated as X–083 and entered in an aggregate quantity not to exceed 5,300 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing with chemical composition (percent by weight): carbon 0.10 to 0.20, manganese 0.50 to 1.00, phosphorus not over 0.02, sulphur not over 0.005, silicon 0.20 to 0.50, chromium 0.40 to 0.70, copper 0.05 to 0.40, nickel 0.05 to 0.30, molybdenum 0.05 to 0.50, vanadium not over 0.02, niobium (columbium) not over 0.05, titanium not over 0.03 with total combined vanadium, niobium (columbium) and titanium content of 0.01 to 0.07, and aluminum 0.01 to 0.05, with iron as the only remaining input; minimum tensile strength 621 MPa, minimum tensile yield 496 MPa; minimum elongation of 25 percent;

(cxviii) Hot-rolled flat-rolled products, designated as N–316; the foregoing cut to length; thickness 4.75 to 6.00 mm; with chemical composition (percent by weight): carbon 0.20 to 0.30, manganese 0.80 to 1.00, nickel 3.25 to 4.00, chromium 1.25 to 2.00 and molybdenum 0.25 to 0.50; known commercially as ''Astralloy V TM'';

(cxix) Hot-rolled flat-rolled products, designated as N–329; the foregoing with thickness 30 mm to 120 mm, inclusive; certified by the importer to have been continuously cast with electromagnetic stirring and with minium rolling reduction ration of 5:1; no over 2 ppm hydrogen content; full annealed to a surface hardness not to exceed HBS 10/3000; with either of the following chemical compositions (percent by weight):

(A) carbon 0.28 to 0.29, silicon 0.64 to 0.72, manganese 0.80 to 0.90, chromium 0.80 to 0.90, phosphorus not over 0.015, sulfur not over 0.005, nickel 1.10 to1.15, molybdenum 0.30 to 0.35, aluminum 0.02 to 0.07, titanium 0.020 to 0.040 and boron 0.0005 to 0.003; or

(B) carbon 0.28 to 0.29, silicon 0.64 to 0.72, manganese 0.85 to 0.95, chromium 0.80 to 0.90, phosphorus not over 0.01, sulfur not over 0.005, nickel 0.20 to 0.30, molybdenum 0.30 to 0.35, aluminum 0.02 to 0.07, titanium 0.02 to 0.04 and boron 0.0005 to 0.003;

(cxx) Stainless steel bars and rods, designated as N–319 and entered in an aggregate quantity not to exceed 5 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing not further worked than hot-rolled, hot-drawn or extruded; if in standard metric sizes of square section measuring 10 mm to 50 mm, or if of rectangular section with the smallest side measuring 10 mm to 25 mm and the largest side measuring not over 100 mm; length not over 4,000 mm; with chemical composition (percent by weight): carbon not over 0.07, manganese not over 2.0, silicon not over 1.0, phosphorus not over 0.04, sulfur not over 0.03, chromium not over 20.0, nickel not over 12.0 and remainder iron;

(cxxi) Stainless steel bars, designated as X–081 and entered in an aggregate quantity not to exceed 1,500 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive the foregoing hot-rolled or forged, rough or smooth turned; AISI 410; with chemical composition (percent by weight): carbon not over 0.15 and chromium 11.5 or more; liquid quenched and double tempered; minimum yield 517 MPa; minimum tensile strength 655 MPa; minimum elongation 17 percent; maximum hardness Rockwell C 22 (241 BHN);

(cxxii) Welded rectangular tubes, designated as N–495; the foregoing meeting ASTM A–500; measuring 152.4 mm by 50.8 mm but having a minimum yield strength 450 MPa; wall thickness 1.65 mm to 6.05 mm; length 6,096 to 12,192 mm; galvanized with a smooth in-line galvanized external zinc coating of 100 g/m^2 to 200 g/m^2; external zinc coating further passivated to resist white rust; internal corrosion protection (barrier or zinc rich paint); fully killed, continuous cast fine grain microstructure; with chemical composition (percent by weight): carbon not over 0.23, manganese not over 1.35, silicon not over 0.25, aluminum not over 0.10, phosphorus not over 0.035, sulphur not over 0.035 and carbon equivalent not over 0.39; not further worked than cold formed;

(cxxiii) Cold-drawn resulfurized and rephosphorized leaded bars, the foregoing designated as N–323; with chemical composition (percent by weight): carbon not over 0.15, manganese 0.85 to 1.15, phosphorus 0.04 to 0.09, silicon 0.26 to 0.35 and lead 0.15 to 0.35; surface finish 32 RMS or better with maximum camber 3 mm in 915 mm; maximum twist 3 degrees in 915 mm, perpendicular and parallel across stock, radius to radius; either (I) with thickness not over 15.875 mm ±0.05 mm, width not over 47.5 mm ±0.05 and shaped radius edges not over 8 mm, or (II) with thickness not over 14.325 mm ±0.05 mm, width not over

39.725 mm ±0.05 mm and shaped radius edges not over 7.25 mm;

(cxxiv) Products designated as N–361 and sometimes referred to as (but not limited to) products known as ''HPM1''; the foregoing including (I) hot-rolled flat-rolled products 4.75 mm or more in thickness and whether or not rough machined, (II) hot-rolled or hot-forged hardened bars, whether or not rough machined, and (III) hardened bars, hot-rolled, cold-formed and rough machined; all the foregoing with hardness 37 to 41 HRC defined by ASTM E–18; with uniform grain, heat-treated; with chemical composition (percent by weight): carbon 0.05 to 0.15, silicon not over 1.00, manganese 0.50 to 1.50, sulfur 0.05 to 0.15, nickel 2.50 to 3.50, molybdenum 0.20 to 0.70, copper 1.50 to 2.50, aluminum 0.80 to 1.50; mechanical properties as follows: 1,100 to1,350 MPa tensile strength and 15 percent minimum elongation in longitudinal direction; minimum Charpy-notch impact energy is 12 J in longitudinal direction;

(cxxv) Cold-finished bars, designated as N–387; such products may be sandblasted, machined or ground and polished; all the foregoing with chemical composition (percent by weight): carbon not over 0.05, nickel 17 to 19, molybdenum 4 to 5, cobalt 11 to 14 and titanium 1 to 2; martensitic precipitation hardening steel; certified by importer as produced by vacuum induction melting (VIM) followed by consumable electrode vacuum remelting (VAR); minimum tensile strength 2,000 MPa at room temperature; surface finish as rolled, as forged, sandblasted, machined or ground and polished; sometimes referred to as (but not limited to) products known as ''Bohler V726'';

(cxxvi) Flat bars, designated as N–424; not further worked than cold finished, of grade C1018; containing by weight no more than 0.25 percent carbon; width 371.48 mm or more but not over 508 mm; meeting specification ASTM A29/108;

(cxxvii) Cold-drawn flat bars, designated as N–424; the foregoing certified by the importer to have been processed from hot-rolled coil on a Schumag machine or equivalent; of grade C1018; with carbon content not over 0.25 percent by weight; not further worked than cold drawn; thickness 3.17 mm to 12.7 mm; width 12.7 to 50.8 mm; meeting ASTM specification A29/A108;

(cxxviii) Cold-rolled flat-rolled products, designated as N–314; the foregoing continuous cast; in coils; width 600 mm or greater; thickness of not over 5.00 mm; carbon content 0.45 to 0.55 percent by weight; chemical composition to conform to SAE1050; certified by the importer to meet requirements of automotive original equipment manufacturers according to the Production Part Approval Process (PPAP) and qualified to be used in the manufacture of automotive fasteners that may also be designated as ''Safety Critical'' according to QS9000;

(cxxix) Cold-rolled flat-rolled products, designated as N–335; the foregoing in coils; annealed; with chemical composition (percent by weight): nickel 17.5 to 18.5, molybdenum 4.50 to 5.50, cobalt 8.00 to 9.00, titanium 0.45 to 0.65, aluminum 0.10 to 0.15, silicon not over 0.02, manganese not over 0.02, chromium not over 0.01, copper not over 0.01, carbon not over 0.01, sulfur not over 0.005 and phosphorus not over 0.005; titanium carbon-nitride inclusions and other inclusions 5 micrometers or smaller in size; other non-metallic stringers shall be less than 20 microns in length; in strip-coil form; thickness less than 0.4369 mm; minimum width 25.4 cm; surface wet stone ground; free of pits, scratches, cracks or similar defects and free of surface oxidation; any surface defects shall be 10 micrometers or less in size; final finish lightly oiled;

(cxxx) Coated flat-rolled products, designated as N–459 and meeting the characteristics described below:

(A) thickness 0.96 mm to 0.98 mm; width 18.75 mm to 18.95 mm; base of SAE 1010 steel with a two-layer lining, the first layer consisting of copper-base alloy powder with chemical composition (percent by weight): tin 9 to 11, lead 9 to 11, phosphorus less than 0.05, ferrous group less than 0.35, and other materials less than 1 percent; meeting the requirements of SAE standard 797 for bearing and bushing alloys; the second layer consisting of lead 33 to 37 percent, aromatic polyester 28 to 32 percent, and other materials less than 2 percent with a balance of polytetrafluoroethylene (PTFE);

(B) thickness 1.21 mm to 1.25 mm; width 19.4 mm to 19.6 mm; base of SAE 1012 steel with lining of copper-base alloy with chemical composition (percent by weight): tin 9 to 11, lead 9 to 11, phosphorus less than 0.05, ferrous group less than 0.35 and other materials less than 1 percent; meeting the requirements of SAE standard 797 for bearing and bushing alloys;

(C) thickness 0.967 mm to 0.98 mm; width 21.5 mm to 21.7 mm; base of SAE 1010 steel with a two-layer lining, the first layer consisting of copper-base alloy powder with chemical composition (percent by weight): tin 9 to 11, lead 9 to 11, phosphorus less than 0.05 percent, ferrous group less than 0.35 and other materials less than 1; meeting the requirements of SAE standard 797 for bearing and bushing alloys; the second layer consisting of (percent by weight) lead 33 to 37, aromatic polyester 28 to 32 and other materials less than 2 with a balance of polytetrafluoroethylene (PTFE);

(D) thickness 0.96 mm to 0.99 mm; width 7.65 mm to 7.85 mm; base of SAE 1012 steel with a two-layer lining, the first layer consisting of copper-based alloy powder with chemical composition (percent by weight): tin 9 to 11, lead 9 to 11, phosphorus less than 0.05, ferrous group less than 0.35 and other materials less than 1; meeting the requirements of SAE standard 797 for bearing and bushing alloys; the second layer consisting of (percent by weight) carbon 13 to 17 and aromatic polyester 13 to 17, with a balance of polytetrafluoroethylene (PTFE);

(E) thickness 0.955 mm to 0.985 mm; width 13.6 mm to 14 mm; base of SAE 1012 steel with a two-layer lining, the first layer consisting of copper-based alloy powder with chemical composition (percent by weight): tin 9 to 11, lead 9 to 11, phosphorus less than 0.05, ferrous group less than 0.35 and other materials less than 1; meeting the requirements of SAE standard 797 for bearing and bushing alloys; the second layer consisting of (percent by weight) lead 33 to 37, aromatic polyester 28 to 32 and other materials less than 2 percent with a balance of polytetrafluoroethylene (PTFE);

(F) flat products 1.22 mm to 1.24 mm in thickness; 20 mm to 20.4 mm in width; consisting of carbon steel coils (SAE 1012) with a lining of sintered phosphorus bronze alloy with chemical composition (percent by weight): tin 5.5 to 7; phosphorus 0.03 to 0.35; lead less than 1 and other non-copper materials less than 1;

(G) thickness 1.8 mm to 1.88 mm; width 43.3 mm to 43.7 mm; base of SAE 1010 steel with a lining of aluminum-based alloy with chemical composition (percent by weight): tin 10 to 15, lead 1 to 3, copper 0.7 to 1.3, silicon 1.8 to 3.5, chromium 0.1 to 0.7 and other materials less than 1; meeting the requirements of SAE standard 788 for bearing and bushing alloys; or

(H) thickness 1.8 mm to 1.88 mm; width 24.2 mm to 24.6 mm; base of SAE 1010 steel with a lining of aluminum alloy with chemical composition (percent by weight): tin 10 to 15, lead 1 to 3, copper 0.7 to 1.3, silicon 1.8 to 3.5, chromium 0.1 to 0.7 and other materials less than 1; meeting the requirements of SAE standard 788 for bearing and bushing alloys;

(cxxxi) Cold-rolled flat-rolled products, designated as N–521; the

foregoing hardened and tempered; thickness not over 0.41 mm with tolerance of ±0.20 mm; width not over 13 mm with tolerance of ±0.127 mm; hardness HRC 52 to 54; of C1095 grade with chemical composition (percent by weight): carbon 0.90 to 0.98, silicon 0.15 to 0.35, manganese 0.30 to 0.45, phosphorus not over 0.007, sulfur not over 0.007 and chromium 0.10 to 0.20; surface finish bright polished, free from pits, scratches, rust, cracks, or seams; smooth round edges; edge camber (in each 2438.4 mm length) of less than or equal to 6.35 mm arc; height tolerance of ±0.20 mm;

(cxxxii) Cold-rolled flat-rolled products, designated as N–530; the foregoing with thickness 1.0 mm to 4.0 mm ±0.025 mm; width of 120 mm to 650mm; with chemical composition (percent by weight): carbon 0.70 to 0.80, silicon 0.25 to 0.50, manganese 0.50 to 0.70, phosphorus not over 0.035, sulfur not over 0.035 and chromium 0.30 to 0.40; through-hardened to 40 to 50 HRC with a tolerance of ±2 HRc; flatness/bow across of not more than 0.0015 mm per mm sheet width; with bright finish free from pits, rust, cracks or seams;

(cxxxiii) Zinc-nickel alloy electrolytic coated flat-rolled products, designated as N–437; the foregoing chemically etched black, with a surface brightness equal to or less than 20 L value, a surface gloss equal to or less than 35 G value, black color, thickness 0.3 mm to 2.3 mm, width 700 mm to 1250 mm; with either of the following finishes:

(A) anti-fingerprint, acrylic clear resin and chromate coated; known commercially as ''River Zinc';

(B) anti-fingerprint, acrylic clear resin coated and chromate free; known commercially as ''River Zinc–FC–Z';

(cxxxiv) Coated flat-rolled products, designated as N–476; the foregoing of width 10 mm to 100 mm; thickness including coatings from 0.11 mm to 0.60 mm; coating thickness of 0.003 mm to 0.005 mm; coating composed of either (I) two evenly applied layers, the first layer consisting of 99 percent zinc, 0.5 percent cobalt and 0.5 percent molybdenum by weight, followed by a layer consisting of phosphate; or (II) three evenly applied layers, the first layer consisting of 99 percent zinc, 0.5 percent cobalt and 0.5 percent molybdenum by weight, followed by a layer consisting of phosphate, and finally a layer consisting of silicate;

(cxxxv) Hot-rolled or hot-rolled and machined bars, designated as N–376; the foregoing of thickness 25 mm to 180 mm; width 76 mm to 359 mm; with chemical composition (percent by weight): carbon 0.3 to 0.4, silicon 0.3 to 0.7, manganese 0.5 to 1.0, nickel 0.5 to 1.0, chromium 0.5 to 1.0 and molybdenum 0.4 to 1.0; certified by the importer to have been produced by electric furnace and vacuum degassed;

(cxxxvi) Hot-rolled bars, designated as N–424; the foregoing not further worked, certified by importer to meet grade B26 boron alloy steel in flat rectangular profile, with sectional dimensions of 212.73 mm width and 6.35 mm thickness; with a tolerance of ±1.5 mm to all cross-sectional dimensions;

(cxxxvii) Bright finish hot-rolled turned and polished steel bars, designated as N–464; the foregoing with diameter 22 to 30 mm; length 5.5 m to 7.5 m; with chemical composition (percent by weight): carbon 0.14 to 0.20, silicon not over 0.20, manganese 0.50 to 0.70, phosphorus not over 0.035, sulfur 0.020 to 0.040, chromium 0.70 to 0.90, nickel 3.10 to 3.50, aluminum 0.020 to 0.050 and copper not over 0.25; bright annealed bar; surface finish free from pits, scratches, cracks, or seams; edge camber not to exceed 1.0 mm per 1.0 m of length; as quenched grain size of 5 to 8 according to ASTMA112;

(cxxxviii) Hot-rolled flat-rolled products, designated as N–316 and meeting the characteristics described below:

(A) dual phase; thickness 1.7 mm to 10.03 mm; width 0.752 m to 1.52 m; yield strength of 1040 MPa to 1270 MPa, tensile strength not more than 1400 MPa, elongation not less than 4 percent; with chemical composition (percent by weight): carbon not over 0.2, manganese not over 1.8, phosphorus not over 0.02, sulfur not over 0.006, silicon not over 0.3, vanadium not over 0.1, titanium not over 0.1 and boron not over 0.005; sometimes referred to as (but not limited to) products known as ''Usiphase 1400'';

(B) multiphase; thickness from 2.20 mm to 6.5 mm; width less than 1.56 m; minimum yield strength 580 MPa; tensile strength from 790 MPa to 900 MPa; elongation not less than 13 percent in thicknesses of 2.2 mm to 2.999 mm, elongation not less than 15 percent in thicknesses of 3 to 6.5 mm; with chemical composition (percent by weight): carbon not over 0.08, manganese not over 2.0, phosphorus not over 0.025, sulfur not over 0.01, silicon not over 0.5 and aluminum 0.02 to 0.08, sometimes referred to as (but not limited to) product known as ''Usiform 800'';

(C) non-magnetic; with a fully austenitic structure; thickness not over 4.75 mm; width of 1 m to 2 m; length 3 m to 7.62 m; hardness of 180 to 250 BHN (800 MPa); with chemical composition (percent by weight): carbon 1.1 to 1.2, manganese 12 to 13.5, sulfur not over 0.01, phosphorus 0.03 and silicon 0.25 to 0.4; otherwise according to ASTM A 128 Grade B2 for chemistry only; sometimes referred to as (but not limited to) products known as ''Creusabro M'';

(D) dual phase; thickness of 1.7 mm to 10.03 mm; width 1.02 m to 1.52 m; yield strength 800 to 950 MPa; tensile strength 1,150 MPa; elongation not less than 5 percent; with chemical composition (percent by weight): carbon not over 0.2, manganese not over 1.2, phosphorus not over 0.02, sulfur not over 0.006 and chromium not over 0.8; sometimes referred to as (but not limited to) products known as ''Usiphase 1200'';

(E) dual phase; thickness 1.7 mm to 10.03 mm; width 1.02 m to 1.52 m; minimum yield strength of 800 MPa; minimum tensile strength of 1,050 MPa; with chemical composition (percent by weight): carbon 0.20 to 0.25, manganese 1.1 to 1.4, phosphorus not over 0.025, sulfur not over 0.01, silicon not over 0.20, boron 0.001 to 0.005, titanium 0.02 to 0.05 and chromium 0.10 to 0.30; sometimes referred to as (but not limited to) products known as ''Usiphase 1000'';

(F) cut-to-length products; nominal values of properties at 20 °C: tensile strength 1200 N/mm2; yield strength of 900 N/mm2; elongation not less than 12 percent; hardness of 340 to 400 BHN; guaranteed impact properties of 30 J at −20 °C (possessing the transformation induced plasticity or ''TRIP'' effect); with chemical composition (percent by weight): carbon not over 0.20, chromium 0.85 or more, nominal manganese content 1.4, molybdenum 0.1 or more, nominal nickel content 0.3, sulfur content not over 0.01 and phosphorus not over 0.018; sometimes referred to as (but not limited to) products known as ''Creusabro 4000'';

(cxxxix) Hot-rolled flat-rolled products, designated as N–457; the foregoing with thickness 3 mm to 10 mm; width 889 mm to 1,600 mm; minimum yield strength of 792 MPa; minimum tensile strength of 827 MPa, minimum elongation of 12 percent, bendability of 1.3 times thickness; impact toughness of 27.1 J at −40 °C; with chemical composition (percent by weight): carbon not over 0.12, silicon not over 0.10, manganese not over 2.1, phosphorous not over 0.025, sulfur not over 0.010, aluminum not less than 0.015, niobium (columbium) not over 0.09 and titanium not over 0.20;

(cxl) Flat-rolled products clad with tool steel, designated as N–316; the foregoing with nominal chemical composition of cladding layer (percent by weight): carbon 1.5, chromium 12, manganese 0.3, molybdenum 0.7, vanadium 1.0, cladding thickness of 5 mm to 25 mm thick; base material 6 mm

to 25 mm thick; width 1,000 mm or over; length of 3,000 mm or over; hardness of tool steel cladding 54–55 HRC, and the hardness of base metal nominally 150 HV; sometimes referred to as (but not limited to) products known as ''ABROCLAD.'';

(cxli) Centerless ground stainless steel bars, designated as N–372; the foregoing with length 3.66 m or 4.27 m; chemistry falling between AISI 440B and 440C stainless; diameter 7.000 mm; ground surface; certified by the importer as: produced by air melt (regular electric arc furnace); billets ultrasonically tested, magnetic particle tested and visually inspected, and with micro-cleanliness (oxides and sulfides) K value less than 20 per German standards DIN 50 602;

(cxlii) Stainless steel wire, designated as N–470 and certified by the importer as for piston ring applications only; meeting the characteristics described below:

(A) SMX–90 stainless steel rectangular or shaped wire, with chemical composition (percent by weight): carbon 0.80 to 0.90, silicon 0.15 to 0.30, manganese 0.25 to 0.40, phosphorus not over 0.040, sulfur not over 0.030, chromium 17.0 to18.0, molybdenum 1.00 to 1.25, vanadium 0.08 to 0.15 and remainder of iron; edge camber 10 mm/1 m length maximum; decarburization less than 0.010 mm;

(B) SUS420J2 stainless steel rectangular or shaped wire, with chemical composition (percent by weight): carbon 0.26 to 0.40, silicon not over 1.0, manganese not over 1.0, phosphorus not over 0.040, sulfur not over 0.030, chromium 12.0 to 13.0 and remainder of iron; edge camber 10 mm/1 m length maximum; decarburization less than 0.010 mm; or

(C) SMX–70 stainless steel rectangular or shaped wire, with chemical composition (percent by weight): carbon 0.60 to 0.75, silicon not over 1.0, manganese not over 1.0, phosphorus not over 0.040, sulfur not over 0.040, chromium 11.0 to 13.0 and remainder iron; edge camber 10 mm/1 m length maximum; decarburization less than 0.010 mm;

(cxliii) Tin mill black plate, designated as N–333; the foregoing single reduced; of a width of 600 mm or more and specified in accord with ASTM A–623–00 and ASTM A625–98 as follows:

(A) 65 base weight of a nominal thickness of 0.18 mm, T–1, Type MR, 7C Stone finish, or

(B) 60 base weight of a nominal thickness of 0.168 mm, T–3, Type MR, 5C Matte finish;

(cxliv) Welded stainless pipe and tubes with noncircular cross section, designated as N–319 and entered in an aggregate quantity not to exceed 5 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; either in standard metric sizes of square section measuring 15 mm to 100 mm, or of rectangular section with the smallest side measuring 10 mm to 80 mm and the largest side measuring not over 120 mm; wall thickness 1.5 mm to 5 mm; length not over 4,000 mm; with chemical composition (percent by weight): carbon not over 0.07, manganese not over 2.0, silicon not over 1.0, phosphorus not over 0.04, sulfur not over 0.03, chromium not over 20.0, nickel not over 12.0 and remainder iron;

(cxlv) Calorized and ceramic-coated welded pipes, designated as N–449; the foregoing certified by the importer to meet specification JIS-G3445 STK 400; with chemical composition (percent by weight): carbon 0.25, phosphorus not over 0.04 and sulfur not over 0.04; aluminum diffused on both surfaces of pipe (more than 10 percent aluminum by weight) and ceramic-coated on both surfaces of pipe in silica (SiO2); aluminum diffusion on both surfaces of pipe 0.4 to 0.8 mm;

(cxlvi) Hot-rolled bars and rods, designated as N–339; the foregoing of other alloy steel; not further worked than hot rolled; of rectangular cross section; with bevels on either one or two corners; aluminum killed; fine-grained; width from 195 mm to 490 mm; thickness from 12 mm to 65 mm; certified by the importer to have mass per unit length from 20 kg/m to 190 kg/m, excluding double-bevel flats of a width of 330 mm and 406 mm; the foregoing designated as N–339;

(cxlvii) Hot-rolled or forged bars, designated as N–354 and entered in an aggregate quantity not to exceed 100 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; with chemical composition (percent by weight): carbon 0.17 to 0.23, chromium 0.90 to 1.20, molybdenum 0.90 to 1.10 and vanadium 0.60 to 0.80; hardened and tempered with oxidized surface; certified by the importer to meet specifications in BS1506 Grade 681–820, Werkstoff No.1.7729, AFNOR 20 CrMoVTiB4–10; sometimes known commercially as ''Durehete 1055'';

(cxlviii) Rectangular bars, designated as N–424; not further worked than hot-rolled, meeting the characteristics described below (with a tolerance of ±1.5 mm applicable on all cross-sectional dimensions):

(A) thickness 31.75 mm, width 38.1 mm, grade ASTM A 36 and containing by weight 0.25 percent or more but not over 0.60 percent carbon;

(B) thickness 44.45 mm, width 50.8 mm, grade ASTM A36 and containing by weight 0.25 percent or more but not over 0.60 percent carbon;

(C) thickness 57.15 mm, width 76.2 mm, grade ASTM A36 and containing by weight 0.25 percent or more but less than 0.60 percent carbon;

(D) thickness 25.4 mm or more, width 27 mm or more but less than 152.4 mm, grade C1018 and containing by weight less than 0.25 percent carbon;

(E) freecutting AISI grade C11L17, width 127.0 mm and thickness 38.1 mm;

(F) grade SAE4140, width 76.2 mm, thickness 63.5 mm, hardened and tempered and certified by the importer to have been magnetic particle inspected for cracks;

(G) thickness 76.2 mm, width 114.3 mm, grade ASTM A36 and containing by weight 0.25 percent or more but less than 0.60 percent carbon;

(H) grade ASTM A 36, containing by weight 0.25 percent or more but less than 0.60 percent carbon, thickness 44.5 mm and width 63.5 mm;

(I) grade ASTM A36, containing by weight 0.25 percent or more but less than 0.60 percent carbon, thickness 31.75 mm and width 50.8 mm;

(J) grade ASTM A36, containing by weight 0.25 percent or more but less than 0.60 percent carbon, thickness 63.5 mm and width 88.9 mm;

(K) grade SAE 4340, width 69.85 mm, thickness 44.45 mm and annealed; or

(L) grade ASTM A36, containing by weight 0.25 percent or more but less than 0.60 percent carbon, thickness 63.5 mm and width 76.2 mm;

(cxlix) Freecutting bars, designated as N–425; the foregoing of SAE/AISI grade C1144 or equivalent; not further worked than hot-rolled; in rectangular flat profile; width 61.12 mm and thickness 14.27 mm; with a tolerance of ±1.5 mm on cross sectional dimensions;

(cl) Hot-rolled bars, designated as N–464; the foregoing turned and polished; bright annealed; surface finish free from pits scratches, cracks, or seams; edge camber not to exceed 1 mm per meter length; and grain size of 5 to 8 according to ASTMA112; length 5.5 m to 7.5 m; and meeting the characteristics described below:

(A) diameter 22 mm or 30 mm; with chemical composition (percent by weight): carbon 0.22 to 0.29, silicon content not over 0.40, manganese 0.60

to 0.90, phosphorus less than or equal to 0.035, sulfur 0.020 to 0.035, chromium 0.90 to 1.20 and molybdenum 0.15 to 0.30; or

(B) diameter 25 mm to 50 mm; with chemical composition (percent by weight): carbon 0.14 to 0.19, silicon 0.15 to 0.40, manganese 0.40 to 0.60, phosphorus not over 0.035, sulfur 0.020 to 0.35, chromium 1.50 to 1.80, molybdenum 0.25 to 0.35, nickel 1.40 to 1.70, aluminum not over 0.020 and nitrogen not over 0.008;

(cli) Galvanized cold-formed angles, designated as N–495 and entered in an aggregate quantity not to exceed 300 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing with smooth in-line galvanized zinc coating with controlled mass of 100 g/m² minimum applied after forming with the zinc coating further passivated to resist white rust; not further cold worked; not manufactured from pre-galvanized or Galvalume strip; in lengths from 6.096 m to 12.192 m; certified by the importer to meet OneSteel Product Specification TS100; with included angle between the sides of an angle 90 degrees, with tolerances stated: (I) where shorter leg length is less than 50.8 mm, ±2.0 degrees, or (II) where shorter leg length is greater than 50.8 mm but less than 76.2 mm, ±1.5 degrees or (III) where shorter leg length is greater than 76.2 mm, ±1.0 degree; maximum angle of twist is 1 degree per meter; with base steel material: fully killed, continuous cast, fine grain, with chemical composition (maximum percent by weight): carbon 0.20, manganese 1.60, silicon 0.10, aluminum 0.10, phosphorus 0.040, sulfur 0.030 and carbon equivalent of no more than 0.39; angles produced from flat product with uniform thickness; in the following combinations of sizes and strength: (I) equal angles: (i) 31.8 mm x 31.8 mm to 50.8 mm x 50.8 mm and thickness of 2.38 mm and yield strength of 350 MPa; (ii) 38.1 mm x 38.1 mm to 152.4 mm x 152.4 mm and thickness of 3.96 mm, 4.77 mm or 5.95 mm and minimum yield strength of 450 MPa; (iii) 76.2 mm x 76.2 mm to 152.4 mm x 152.4 mm and thickness of 7.95 mm and minimum yield strength of 400 MPa; or (II) unequal angles: (iv) 76.2 mm x 50.8 mm to 152.4 mm x 101.6 mm and thickness of 3.96 mm, 4.77 mm or 5.95 mm and minimum yield strength of 450 MPa; (v) 101.6 mm x 76.2 mm to 152.4 mm x 101.6 mm and thickness of 7.95 mm and minimum yield strength of 400 MPa;

(clii) Galvanized cold-formed flats, designated as N–495; the foregoing with smooth zinc coating with controlled mass of 100 g/m² minimum applied after forming with the zinc coating further passivated to resist white rust; not further cold-worked beyond cold forming; not manufactured from pre-galvanized strip; length 6.096 m; certified by the importer to meet OneSteel Product Specification TS100; in the following combinations of size and strength: (i) 50.8 mm to 304.9 mm with thicknesses only of 3.96 mm, 4.77 mm or 5.95 mm and yield strength of 400 MPa; (ii) 152.4 mm to 304.8 mm with thickness only of 7.95 mm and yield strength of 350 MPa; with the following tolerances: for 50.8 mm to less than 101.6 mm, width tolerance of ±0.75 mm; for 101.6 mm to 203.2 mm, width tolerance of ±1.0 mm; and for greater than 203.2 mm, width tolerance of ±1.5 mm; base steel material: fully killed, continuous cast, fine grain, with chemical composition (maximum percent by weight): carbon 0.20, manganese 1.60, silicon 0.10, aluminum 0.10, phosphorus 0.040, sulfur 0.030 and carbon equivalent no more than 0.39; produced from flat-rolled with uniform thickness;

(cliii) Hot-rolled round bars, designated as N–497; the foregoing commercially described as Special Bar Quality; bloom cast; either cut-to-length with diameter 25.4 mm to 76.2 mm or in coils with diameter 25.4 mm to 50.8 mm; with one of the following chemical compositions (percent by weight):

(A) carbon 0.45 to 0.52, silicon not over 0.05, manganese 0.70 to 1.00, phosphorus not over 0.03, sulfur 0.030 to 0.65 and vanadium 0.08 to 0.13 (known as Alloy ZF49); certified by the importer as processed using bloom caster;

(B) carbon 0.33 to 0.37, silicon not over 0.035, manganese 0.50 to 0.80, phosphorus not over 0.03, sulfur 0.02 to 0.035 and copper not over 0.25 (known as Alloy ZF34C); certified by the importer as processed using bloom caster;

(C) carbon 0.12 to 0.17, manganese 0.65 to 0.95, silicon 0.15 to 0.35, phosphorus not over 0.030, sulfur 0.02 to 0.04, chromium 1.0 to 1.3, molybdenum 0.15 to 0.25, boron 0.001 to 0.003 and aluminum 0.02 to 0.05 (known as ZF Grade 15CrMo5); certified by the importer as produced using bloom caster and basic oxygen process;

(D) carbon 0.13 to 0.18, silicon not over 0.040, manganese 1.0 to 1.3, phosphorus not over 0.025, sulfur 0.020 to 0.035, chromium 0.80 to 1.10, molybdenum not over 0.08, nickel not over 0.030, aluminum 0.02 to 0.05, boron 0.001 to 0.003; copper not over 0.30 (known as Alloy ZF6); certified by the importer as processed using bloom caster; or

(E) carbon 0.17 to 0.23, manganese 0.60 to 1.00, phosphorus not over 0.020 and silicon 0.15 to 0.35 (known as Alloy SCR 420); certified by the importer as produced using bloom caster and basic oxygen process;

(cliv) Stainless steel bars, designated as N–378; the foregoing of alloy iron-chrome-aluminum round wire on spools or in coils; with chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.70, manganese not over 0.50, chromium 20.50 to 23.50, aluminum 5.0 to 6.0 and balance iron; sometimes referred to as (but not limited to) products known as ''Kanthal APM'';

(clv) Carbon or alloy steel forged fittings, designated as X–063 and entered in an aggregate quantity not to exceed 3,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing with chemical composition (percent by weight): manganese-to-carbon ratio greater 4:1, carbon 0.18 to 0.23; sulfur not over 0.030 and carbon equivalent of not over 0.43; NACE MR–0175/99 guaranteed; heat treated; impact tested; certified by the importer as produced to ASTM A105N;

(clvi) Flat bars of non-alloy freecutting steel, designated as N–424; the foregoing not further worked than cold drawn; having either (I) thickness from 20 mm to 25.4 mm and width 30 mm to 76.2 mm or 165.1 mm to 380 mm or (II) thickness of 50.8 mm to 115 mm and width of 30 mm to 76.2 mm or 165.1 mm to 380 mm; meeting ASTM A29/A108;

(clvii) Cold-rolled flat-rolled products for producing flux-cored welding wires, designated as N–316 and entered in an aggregate quantity not to exceed 15,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; tensile strength 276 MPa to 345 MPa; minimum elongation in (50.8 mm gauge length) of 35 percent, hardness 45 HRB; certified by the importer as meeting quality assurance requirements of ASME Boiler & Pressure Vessel Code Section III, 10 CFR 50—Appendix B, ANSI N 45.2, 10 CFR 21 and ISO 9002 (as in effect on the first day of the 12-month period beginning on September 1, 2002 or September 1, 2003 or the period from September 1, 2004 through March 20, 2005, inclusive); meeting the characteristics described below:

(A) thickness of 0.483 mm, 0.635 mm, 0.762 mm, 0.813 mm, 1.02 mm, or 1.27

mm (thickness tolerance of ±3 percent); width of 228 mm to 305 mm; with chemical composition (percent by weight): carbon 0.005 to 0.015, manganese 0.23 to 0.43, phosphorus not over 0.015, sulfur not over 0.010, silicon not over 0.025, aluminum not over 0.030, copper not over 0.040, nickel not over 0.080, chromium not over 0.070, niobium (columbium) not over 0.010, vanadium not over 0.010, titanium not over 0.010, molybdenum not over 0.020, nitrogen not over 0.0045, zirconium not over 0.020, tin not over 0.010 and calcium not over 0.003;

(B) thickness of 0.483 mm, 0.635 mm, 0.762 mm, or 1.27 mm (thickness tolerance of ±3 percent); width of 228 mm to 305 mm; with chemical composition (percent by weight): carbon 0.050 to 0.080, manganese 0.20 to 0.50, phosphorus not over 0.015, sulfur not over 0.10, silicon not over 0.025, aluminum not over 0.030, copper not over 0.040, niobium (columbium) not over 0.010, vanadium not over 0.010, titanium not over 0.010 and nitrogen not over 0.005; or

(C) thickness of 0.483 mm or 0.762 mm (thickness tolerance of ±3 percent); width of 228 mm to 305 mm; with chemical composition (percent by weight): carbon 0.020 to 0.040, manganese 0.20 to 0.40, phosphorus not over 0.015, sulfur not over 0.010, silicon not over 0.030, aluminum not over 0.040, copper not over 0.10, nickel not over 0.080, chromium not over 0.080, niobium (columbium) not over 0.010, vanadium not over 0.010, titanium not over 0.010, molybdenum not over 0.020, boron not over 0.0001, nitrogen not over 0.005, arsenic not over 0.003, lead 0.001, tin not over 0.002, antimony not over 0.001 and with combined chromium, nickel, and molybdenum not over 0.15;

(clviii) Cold-rolled flat-rolled low-carbon continuous-annealed products, designated as N–364: the foregoing in coils; with an electron beam texturing (EBT) finish; hardness of 50 HRB to 65 HRB; surface carbon after power wash of 4 mg/m^2 per side maximum; nitrogen not over 0.005 percent by weight; center line thickness tolerance of ±3 percent versus approximate value; and otherwise according to grade ASTM 1008;

(clix) Continuous cast, continuous annealed, temper rolled flat-rolled products, designated as N–381 and entered in an aggregate quantity not to exceed 10,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing with chemical composition (percent by weight): carbon 0.015 to 0.06, manganese 0.10 to 0.40, phosphorus not over 0.020, sulfur not over 0.020, aluminum 0.020 to 0.070 and nitrogen not over 0.008; hardness of 30 RW30T to 50 RWH30t; yield strength of 138 MPa to 241 MPa; grain size a minimum of 10 and a maximum of 6; grain structure equiaxed and uniform; angular and plate shaped inclusions and carbides not allowed; segregation of impurities and second phases not allowed; surface roughness not to exceed a maximum of 1.24 micrometers in both longitudinal and transverse direction; surface carbon, iron fines, or other smut not easily removed by alkaline solution not allowed; coil welds not allowed anywhere in the coil; thickness 0.020 mm or more but not over 0.045 mm (tolerance of ±0.0381 mm);

(clx) Cold-rolled foam cutting flat-rolled products, designated as N–387; the foregoing with fine grain structure (grain size number greater than 8 according to ASTM method); tensile strength is 1200 to 1650 N/mm^2; flatness (crosswise) 0.1 percent of the width; straightness 0.6 mm/m; roughness to 0.6 mm; thickness from 0.2 mm to 3.5 mm; width 5 mm to 410 mm; with chemical composition (percent by weight): carbon 0.67 to 0.83, silicon 0.12 to 0.38, manganese 0.36 to 0.54, phosphorus not over 0.025, sulfur not over 0.020, chromium 0.18 to 0.30, aluminum 0.020 to 0.040 and nickel not over 1; certified by the importer as having smooth and rounded (SK3) back and having undergone repeated special annealing operations (automatic annealing under protection gas (no edge decarburisation));

(clxi) Cold-rolled flat-rolled drawing products, designated as N–414 and entered in an aggregate quantity not to exceed 20,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing of carbon steel referenced in ASTM A1008; thickness 0.381 mm to 2.286 mm and width not over 1828.8 mm, with thickness tolerance corresponding to one-half of ASTM A568; camber tolerance corresponding to one-half of ASTM A568; flatness tolerance corresponding to one-half of ASTM A568; meeting any of the following characteristics: (I) products known as ''Type A'' drawing steel with chemical composition (percent by weight): carbon not over 0.08, manganese not over 0.50, phosphorus not over 0.02, aluminum 0.01 or more and sulfur not over 0.02; or (II) products known as ''Type B'' drawing steel with chemical composition (percent by weight): carbon 0.02 to 0.08, manganese not over 0.50, phosphorus not over 0.03, aluminum 0.02 or more and sulfur not over 0.02; certified by the importer to be slit and/or blanked and painted for use in the manufacture of residential laundry, cooking and dishwashing appliances;

(clxii) Cold-rolled flat-rolled carbon products, designated as N–414 and in an aggregate quantity not to exceed 15,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing referenced in ASTM A424; designated for porcelain enameling; thickness 0.584 mm to 1.219 mm; width not over 1828.8 mm; meeting any of the following characteristics: (I) products known as ''TYPE 1'' with carbon not over 0.008 percent by weight, designated for direct cover coat enameling or for ground and cover coat enameling; (II) products known as ''TYPE 2'' with carbon not over 0.05 percent by weight, designated for ground or cover coat enameling; (III) products known as ''TYPE 3'' of interstitial-free cold-rolled steel with maximum carbon content 0.02 percent by weight, designated for ground or cover coat enameling; all the foregoing certified by the importer to be slit and/or blanked and porcelain enameled utilizing either a powder porcelain or wet porcelain system for use in the manufacture of residential laundry and cooking appliances;

(clxiii) Cold-rolled flat-rolled products, designated as N–427; the foregoing with thickness 1.5 to 2.0 mm (tolerance −0/+0.06 mm); width of 150mm (tolerance −0/+0.02 mm); ring width 150 mm (tolerance −0.5/+0 mm); produced with reference to DIN Specification SEW 093; with chemical composition (percent by weight): carbon 0.05 to 0.10, manganese 0.70 to 1.30, silicon less than 0.40, phosphorus less than 0.020, sulfur less than 0.005, aluminum 0.025 to 0.075, niobium (columbium) 0.025 to 0.070 and titanium less than 0.11; tensile strength in N/mm^2 680–800; yield strength in N/mm^2 min 630; minimum elongation 10 percent;

(clxiv) Cold-rolled flat-rolled products, designated as N–444; meeting the characteristics described below:

(A) of grade ZSTE 630; with chemical composition (percent by weight): carbon 0.05 to 0.09, silicon 0.20 to 0.35, manganese 0.80 to 1.00, phosphorus not over 0.02, sulfur not over 0.005, aluminum 0.03 to 0.07, chromium not over 0.15, titanium 0.06 to 0.10 and niobium (columbium) 0.03 to 0.06; number 3 slit edge, dull or bright

surface, in coils; thickness 1.50 mm to 3.00 mm; width 50.00 mm to 480 mm; thickness tolerance. 0.08 mm;

(B) of grade ZSTE 800; with chemical composition (percent by weight): carbon 0.05 to 0.09, silicon 0.20 to 0.35, manganese 0.80 to 1.00, phosphorus not over 0.02, sulfur not over 0.005, aluminum 0.03 to 0.07, chromium not over 0.15, titanium 0.06 to 0.10 and niobium (columbium) 0.03 to 0.06; tensile strength 820 to 950 N/mm^2; yield strength 800 N/mm^2 or more; elongation A80 9 percent or more; number 3 slit edge, dull or bright surface, in coils; thickness 1.00 mm to 3.00 mm; width 50.00 mm to 480 mm; thickness tolerance 0.06 mm;

(C) of grade RAWAEL 90; with chemical composition (percent by weight): carbon 0.05 to 0.09, silicon 0.20 to 0.35, manganese 0.80 to 1.00, phosphorus not over 0.02, sulfur not over 0.005, aluminum 0.03 to 0.07, chromium not over 0.15, titanium 0.06 to 0.10 and niobium (columbium) 0.03 to 0.06; tensile strength 850 to 950 N/mm^2; yield strength min. 750 N/mm^2; elongation A80 min. 7 percent, number 3 slit edge, dull or bright surface, in coils; thickness 1.30 mm to 3.50 mm; width 30.00 mm to 480 mm; thickness tolerance 0.08 mm; or

(D) texture cold-rolled products (''SORBITEX''); thickness 0.099 mm to 1.5228 mm; width 2.9959 mm to 199.75 mm; with chemical composition (percent by weight): carbon 0.76 to 0.96, silicon 0.1 to 0.35, manganese 0.3 to 0.6, phosphorus less than 0.025, sulfur less than 0.02, aluminum less than 0.06, chromium less than 0.3, nickel less than 0.2, copper not over 0.2; tensile strength 1,689 MPa to 2,516 MPa;

(clxv) Cold-rolled flat-rolled products, designated as X–010 and entered in an aggregate quantity not to exceed 86 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing of grade B55; with chemical composition (percent by weight): carbon 0.50 to 0.55, silicon 0.15 to 0.30, manganese 0.70 to 0.90, sulfur not over 0.025, phosphorus not over 0.025 and chromium 0.13 to 0.23; hardened and tempered to a bainitic structure; hardness 33 HRC to 35 HRC; finish to be consistent on both sides and across production batches; to accept X3 die bend without fracture; flatness 0.025 mm max per 25.4 mm of width and straightness 0.75mm max in 760 mm; reverse camber 0.075 mm in 760 mm; steel cleanness to ASTME45 CT4–5; grain size 5–8 to ASTME 112; thickness 1.0 mm or less; width 25.4 mm or less;

(clxvi) Cold-rolled flat-rolled products, designated as X–099; the foregoing high strength low alloy; continuous annealed; of grade 50; thickness 1.57 mm to 1.68 mm , per ASTM A1008 HSLAS–F; width over 600 mm;

(clxvii) Flat-rolled galvannealed products, designated as N–346 and entered in an aggregate quantity not to exceed 80,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing vacuum degassed, interstitial-free with gauge ranging from 0.61 mm to 2.10 mm and width from 830 mm to 1830 mm; with chemical composition (percent by weight): carbon not over 0.02, silicon 0.06 to 0.10, manganese not over 0.40, phosphorus not over 0.02, sulfur not over 0.02, aluminum 0.01 or more, copper not over 0.20, nickel not over 0.20, chromium not over 0.15, molybdenum not over 0.06 and titanium not over 0.30; yield strength ranging from 120 to180 N/mm2 and tensile strength of 350 N/mm^2 maximum;

(clxviii) Flat-rolled coated products, designated as N–406 and entered in an aggregate quantity not to exceed 9,550 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing in coils; with G–30 hot dipped galvanized coating ASTMA–653CS type B; less than 3.25 mm in thickness; with chemical composition (percent by weight): carbon 0.06 to 0.14 and sulfur not over 0.025; lightly oiled, no chemical treatment of finished surface. Rockwell B hardness 40 to 55; meets ASTM E290–87 bend test; cut edges cropped back to gauge, yield strength 240 to 310 MPa; elongation in 50 mm not less than 30 percent; and tensile strength 380 to 450 MPa; certified to be used in the production of welded pipe or tube;

(clxix) Flat-rolled products, designated as N–420 and entered in an aggregate quantity not to exceed 4,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing with thickness 0.70 mm to 0.80 mm (±0.04 mm); width 1,650 mm or more (−0 mm/+4 mm); with chemical composition (percent by weight): carbon not over 0.01, sulfur 0.012 to 0.013, manganese 0.10 to 0.13 and phosphorus 0.006 to 0.014; yield strength of 155 to 166 MPa; tensile strength of 309 to 317 MPa; a minimum mechanical elongation of 46 percent; surface finish must be free from pits scratches, rust, slivers, and laminations for automotive critical exposed surface application;

(clxx) Hot-dipped galvanized flat-rolled products, designated as N–436; the foregoing with chemical composition (percent by weight): boron 0.0012 to 0.0030 and carbon 0.026 to 0.050; Rockwell hardness from 50 to 65; a thickness over 0.248 mm but not over 0.330 mm;

(clxxi) Electrogalvanized flat-rolled products, designated as N–465; the foregoing drawing quality special killed steel, according to ASTM A879; with zinc coating weight from 20 g/m^2 to 70 g/m^2; thickness of 2.06 mm and greater; width 762 mm to 1,730 mm; with chemical composition (percent by weight): carbon not over 0.08, manganese not over 0.35, phosphorus not over 0.02, sulfur not over 0.025, aluminum 0.02 or more, copper not over 0.20, nickel not over 0.20, chromium not over 0.15 and molybdenum not over 0.06; yield strength ranging from 140 to 200 N/mm^2; tensile strength of 350 N/mm^2 maximum;

(clxxii) Flat-rolled coated products, designated as N–469 and meeting the characteristics described below:

(A) Hot-dip galvanized zinc coated flat-rolled products, the foregoing with a mainly ferritic-bainitic matrix and with dispersed residual austenite islands; thickness 0.7 mm to1.75 mm; width 800 mm to 1600 mm; with chemical composition (percent by weight): carbon 0.06 to 0.24, silicon not over 2.0, manganese 1.2 to 2.0, phosphorus not over 0.04, sulfur not over 0.015, aluminum not over 2.0, chromium not over 0.5 and boron not over 0.005; yield strength of 380 to 500 MPa, tensile strength 600 MPa or more; elongation over 24 percent;

(B) Electrogalvanized zinc coated hot-rolled complex phase products meeting the characteristics described below:

(I) with extremely fine microstructure of ferrite, bainite and martensite; thickness 1.5 mm to 2.99 mm; width 970 mm to 1250 mm; with chemical composition (percent by weight): carbon not over 0.18, silicon not over 0.8, manganese not over 2.2, phosphorus not over 0.025, sulfur not over 0.01, chromium not over 0.6, niobium (columbium) not over 0.08; titanium not over 0.18 and molybdenum not over 0.40; yield strength 800 MPa or more; tensile strength from 800 to 1,130 MPa; an elongation percentage over 12;

(II) with mainly ferritic-bainitic matrix and with dispersed residual austenite islands; thickness 0.7 mm to 1.75 mm; width 800 mm to 1600 mm; with chemical composition (percent by

weight): carbon 0.06 to 0.24, silicon not over 2.0, manganese 1.2 to 2.0, phosphorus not over 0.04, sulfur not over 0.015, aluminum not over 2.0, chromium not over 0.5 and boron not over 0.005; yield strength of 380 to 500 MPa; tensile strength 600 MPa or more; elongation percentage over 24;

(III) with a very finely tuned ferrite, bainite and retained austenite content; thickness 1.6 mm to 2.75 mm; width 1,100 mm to 1,300 mm; with chemical composition (percent by weight): carbon not over 0.22, silicon not over 1.0, manganese not over 1.80, phosphorus not over 0.02, sulfur not over 0.01, aluminum not over 1.5, chromium plus molybdenum not over 0.5 and niobium (columbium) not over 0.05; yield strength 500 MPa or more; tensile strength 700 to 870 MPa; elongation percentage over 25;

(IV) partial martensitic with a soft ferritic matrix and with dispersed islands of a second hard phase, mainly martensitic; thickness 0.8 mm to 1.6 mm; width 800 mm to 1,400 mm; with chemical composition (percent by weight): carbon 0.10 to 0.18, silicon not over 0.8, manganese 1.5 to 2.0, phosphorus not over 0.05, sulfur not over 0.03, aluminum 0.02 to 0.05, chromium not over 0.6 and titanium 0.08 to 0.15; yield strength 600 to 760 MPa; tensile strength 800 MPa or more; elongation percentage over 10;

(C) hot-dipped galvanized hot-rolled complex phase products with an extremely fine microstructure of ferrite, bainite and martensite content; thickness 2.0 mm to 3.0 mm; width 910 mm to 1390 mm; with chemical composition (percent by weight): carbon not over 0.18, silicon not over 0.8, manganese not over 2.2, phosphorus not over 0.025, sulfur not over 0.01, chromium not over 0.6, niobium (columbium) not over 0.08, titanium not over 0.18 and molybdenum not over 0.40; yield strength 800 MPa or more; tensile strength 800 to 1,130 MPa; elongation percentage over 12;

(D) hot-dipped galvanized complex phase products with an extremely fine microstructure of ferrite, bainite and martensite content; thickness 1.5 mm to 2.99 mm; width 970 mm to 1250 mm; with chemical composition (percent by weight): carbon not over 0.18, silicon not over 0.8, manganese not over 2.2, phosphorus not over 0.025, sulfur not over 0.01, chromium not over 0.6, niobium (columbium) not over 0.08, titanium not over 0.18 and molybdenum not over 0.40; yield strength 800 MPa or more; tensile strength 800 to 1,130 MPa; elongation percentage over 12;

(E) hot-dipped galvanized hot-rolled zinc coated martensitic phase products with a finely tuned microstructure of ferrite and martensite content; thickness 1.5 mm to 3.5mm; width 1,000 mm to 1,400 mm; with chemical composition (percent by weight): carbon not over 0.18, silicon not over 1.0, manganese not over 2.0, phosphorus not over 0.02, sulfur not over 0.02, chromium not over 1.0 and niobium (columbium) plus titanium not over 0.18; yield strength 750 MPa or more; tensile strength 1,000 to 1,450 MPa; elongation percentage over 8;

(F) electrogalvanized zinc coated hot-rolled dual phase products with a finely tuned ferrite, bainite and martensite content; thickness 1.6 mm to 2.75 mm; width 1,100 mm to 1,300 mm; with chemical composition (percent by weight): carbon not over 0.12, silicon not over 1.50, manganese not over 1.50, phosphorus not over 0.06, sulfur not over 0.01, aluminum not over 0.015, chromium plus molybdenum not over 1.0 and boron not over 0.005; with the following properties: yield strength of 310 to 450 MPa; tensile strength 530 MPa or more; elongation percentage over 24;

(G) electrogalvanized zinc coated hot-rolled martensitic phase products with a finely tuned microstructure of ferrite and martensite content; thickness 1.5 mm to 3.5 mm; width 1,000 mm to 1,400 mm; with chemical composition (percent by weight): carbon not over 0.18, silicon not over 1.0, manganese not over 2.0, phosphorus not over 0.02, sulfur not over 0.02, chromium not over 1.0 and niobium (columbium) plus titanium not over 0.18; with the following properties: yield strength 750 MPa or more; tensile strength 1,000 to 1,450 MPa; elongation percent over 8; or

(H) hot-dipped galvanized zinc coated partial martensitic products, designated as N–469; the foregoing with a soft ferritic matrix and with dispersed islands of a second hard phase, mainly martensitic; suitable for automotive components such as impact beams, bumpers and body reinforcements; thickness 0.8 mm to 1.6 mm; width 800 mm to 1,400 mm; with chemical composition (percent by weight): carbon 0.10 to 0.18, silicon not over 0.8, manganese 1.5 to 2.0, phosphorus not over 0.05, sulfur not over 0.03, aluminum 0.02 to 0.05, chromium not over 0.6 and titanium 0.08 to 0.15; with the following properties: yield strength of 600 to 760 MPa; tensile strength 800 MPa or more and an elongation percentage over 10;

(clxxiii) Hot-rolled dual phase flat-rolled products of other alloy steel, designated as X–146 and entered in an aggregate quantity not to exceed 1,000 t; the foregoing sometimes referred to as (but not limited to) products known as ''RAGALLITEC DPF''; tensile strength 700 to 1000 MPa; thickness 0.9 mm to 1.6 mm; width 750 mm or more but not over 1250 mm;

(clxxiv) Hot-rolled flat-rolled products, in coils, designated as N–300 or N–316 and entered in an aggregate quantity not to exceed 10,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; meeting the characteristics described below:

(A) produced to specification API 5L Grade X–70; with chemical composition (percent by weight): carbon 0.02 to 0.05, manganese 1.10 to 1.35, phosphorus not over 0.008, sulfur not over 0.0010, silicon 0.150 to 0.250, copper not over 0.15, nickel not over 0.10, chromium not over 0.07, molybdenum not over 0.02, nitrogen not over 0.008, arsenic not over 0.20, aluminum 0.020 to 0.040, tin not over 0.020, vanadium 0.035 to 0.045, niobium (columbium) 0.025 to 0.035, titanium 0.005 to 0.015 and calcium 0.0002 to 0.0050; physical properties: yield ratio of less than 0.91; factor formula of C + Mn/5 + V + 2(Nb); factor range of 35 to 42; gauge range of 6.35 mm nominal up to and including 12.70 mm nominal; width 1,032.027 mm or more but not over 1,735.38 mm; gauge tolerance one-half the ASTM tolerance, except 40 meters both ends to be three-fourths the ASTM per A568–96, Table 4 and A635–96, Table 4; width tolerance: plus 19.05 mm, minus 0.00 mm, approximate value plus 10.16 mm (untrimmed); crown tolerance: approximate value 0.0508 mm, (range min. −0.0127 mm/max 0.0762 mm); inside diameter of 762.0 mm; outside diameter of a maximum of 1,828.8 mm, not to exceed 20,901.89 kg coil weight; other properties: must be calcium treated with a minimum calcium to sulfur ratio of 2:1; all heats must be vacuum degassed; oxygen content must be less than 25 ppm; steel produced shall be suitable for hydrogen-induced-cracking-resistant applications as determined by NACE standard TM 0284–96, Solution A; or

(B) API grade x70 hydrogen induced cracking resistant (NACE) products, tensile properties certified by the importer to be per 70 for the pipe with coil tensile properties (approximate values): yield strength 485 to 605, tensile strength 570 to 690, elongation not less than 24 percent and guaranteed resilience 27.8 J at −10 °C; thickness 2.54 mm to 15.24 mm; width 1.02 m to 2.01 m; with chemical composition (percent by weight): carbon not over 0.15, manganese not over 1.3,

phosphorus not over 0.018, sulfur not over 0.002, silicon not over 0.35, aluminum not over 0.06, copper not over 0.3, nickel not over 0.3, chromium not over 0.25 and vanadium not over 0.08; with a hydrogen-induced cracking guarantee with an average of 9 cuts of NACE solution A pH3: crack length ratio less than 15 percent, crack thickness ratio less than 5 percent and crack sensitivity ratio less than 1.5 percent; and NACE solution B pH 5: crack length ratio less than 10 percent, crack thickness ratio less than 3 percent and crack sensitivity ratio less than 1 percent;

(clxxv) Hot-rolled flat-rolled products, designated as N–310; the foregoing of grade SAE 1095; fine grain with no more than 1 percent gauge thickness decarburisation level; thickness not over 5.3 mm; width not over 321.1 mm; with chemical composition (percent by weight): carbon 0.90 to1.030, silicon 0.15 to 0.30, manganese 0.30 to 0.50, phosphorus not over 0.04, sulfur not over 0.015, chromium 0.15 to 0.30 and nickel not over 0.15; carbides fully spheroidized, having greater than 90 percent of carbides;

(clxxvi) Hot-rolled flat-rolled products, in coil, designated as N–316; the foregoing of API grade X56 high resilience steel; thickness 1.22 cm to 2.5 cm; width 1.65 m to 2.01 m; tensile properties certified by the importer to meet requirements of X56 (yield strength approximate value 460 MPa, tensile strength approximate value 570 MPa, elongation aimed at not less than 36 percent and KCV aimed at 79 J at −40 °C); with chemical composition (percent by weight): carbon not over 0.1, manganese not over 1.4, phosphorus not over 0.025, sulfur not over 0.01, silicon not over 0.3, aluminum not over 0.06, copper not over 0.2, nickel not over 0.2, chromium not over 0.2, tin not over 0.05, niobium (columbium) not over 0.06, molybdenum not over 0.2 and vanadium not exceeding 0.05;

(clxxvii) Hot-rolled flat-rolled products, in coil, designated as N–316 and entered in an aggregate quantity not to exceed 500 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing of API Grade X60 hydrogen induced cracking resistant (NACE) steel; tensile properties certified by the importer to meet the requirements of API Grade X60 (approximate values: yield strength 414 to 564 MPa, tensile strength 517 MPa, elongation not less than 25 percent and guaranteed resilience of 9.1 J at −21°C); thickness 4.83 mm to 16.0mm; width 1.02 m to 2.01 m; with chemical composition (percent by weight): carbon not over 0.16, manganese not exceeding 1.3, phosphorus not over 0.018, sulfur not over 0.003, silicon not over 0.45, aluminum not over 0.06, copper not over 0.4, nickel not over 0.35, chromium not over 0.2 and vanadium not over 0.08; with a hydrogen-induced cracking guarantee with an average of 9 cuts of: NACE solution A pH 3: crack length ratio less than 10 percent, crack thickness ratio less than 3 percent and crack sensitivity ratio less than 1 percent; NACE solution B pH 5: crack length ratio less than 5 percent, crack thickness ratio less than 1.5 percent and crack sensitivity ratio less than 1 percent;

(clxxviii) Hot-rolled flat-rolled products, in coils, designated as N–316 and entered in an aggregate quantity not to exceed 1,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing of API grade X65 hydrogen induced cracking resistant (NACE) steel; tensile properties certified by the importer to meet the requirements of grade X65 (approximate values: yield strength 485 to 630 MPa, tensile strength 545 MPa, and elongation not less than 24 percent); thickness 2.54 mm to 15.24 mm; width 1.02 m to 2.01 m; with chemical composition (percent by weight): carbon not over 0.15, manganese not over 1.0, phosphorus not over 0.015, sulfur content not over 0.002, silicon not over 0.3, aluminum not over 0.05, copper not over 0.1, nickel not over 0.1, chromium not over 0.1 and vanadium not over 0.08; with a hydrogen-induced cracking guarantee with an average of 9 cuts of: NACE solution A pH 3: crack length ratio less than 15 percent, crack thickness ratio less than 5 percent and crack sensitivity ratio less than1.5 percent; and NACE solution B pH 5: crack length ratio less than 10 percent, crack thickness ratio less than 3 percent and crack sensitivity ratio less than 1 percent;

(clxxix) Hot-rolled flat-rolled products, in coils, designated as N–316 and entered in an aggregate quantity not to exceed 10,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing of pressure vessel quality ASTM A 414 grade G steel; width over 1,950 mm with the following characteristics: yield strength minimum of 310 MPa; tensile strength of 517 to 620 MPa; elongation not less than 22 percent; guaranteed resilience of 22 J at −26°C; thickness of 3 mm to 12 mm; width 1.95 m or more; with chemical composition (percent by weight): carbon not over 0.27, manganese not over 1.2, phosphorus not over 0.025, sulfur not over 0.015, silicon not over 0.250, aluminum not over 0.08, copper not over 0.2, nickel not over 0.1, chromium not over 0.1 and vanadium not over 0.03;

(clxxx) Hot-rolled flat-rolled products, designated as N–316; the foregoing in coils, dual phase with low silicon, sometimes known as Usiphase D 60; with thickness of 2.35 mm to 6.25 mm; width not exceeding 1.46 m; yield strength of 330 MPa to 470 MPa; tensile strength of 580 MPa to 670 MPa; elongation not less than 20 percent in thickness of 2.35 mm to 2.999 mm, elongation not less than 24 percent in thickness of 3 mm to 6.25 mm; with chemical composition (percent by weight): carbon 0.06 to 0.09, manganese 0.8 to 1, phosphorus not over 0.03, sulfur not over 0.005, silicon not over 0.25, aluminum 0.02 to 0.06, copper not over 0.35, nickel not over 0.25, chromium not over 0.8, and vanadium not over 0.005;

(clxxxi) Hot-rolled API grade X70 high resilience flat-rolled products, in coils, designated as N–316; the foregoing with thickness 9.5 mm to 20 mm; width 1.65 m to 2.15 m; tensile properties certified by the importer to meet requirements of grade X70 (approximate values: yield strength 580 MPa, tensile strength 650 MPa, elongation not less than 33 percent and KCV 127 J at −40 °C); with chemical composition (percent by weight): carbon not over 0.1, manganese not over 1.6, phosphorus not over 0.025, sulfur not over 0.01, silicon not over 0.4, aluminum not over 0.06, copper not over 0.2, nickel not over 0.2; chromium not over 0.2, tin not over 0.05, niobium (columbium) not over 0.07, molybdenum not over 0.2 and vanadium not over 0.2;

(clxxxii) Hot-rolled flat-rolled API grade X80 high resilience products, in coils, designated as N–316 and entered in an aggregate quantity not to exceed 1,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing with tensile properties certified by the importer to meet requirements of grade X80 (approximate values: yield strength 620 MPa, tensile strength 675 MPa, and elongation not less than 31 percent) and to be of toughness of 126 J at −40°C; thickness from 8 mm to 17 mm; width from 1.5 m to 2.0 m; with chemical composition (percent by weight): carbon not over 0.1, manganese not over 1.6, phosphorus not over 0.025, sulfur not

over 0.01, silicon not over 0.4, aluminum content not over 0.06, copper not over 0.2, nickel not over 0.3, chromium not over 0.2, tin not over 0.05, niobium (columbium) not over 0.08, molybdenum not over 0.2 and vanadium not over 0.1;

(clxxxiii) Hot-rolled flat-rolled products, designated as N–374 and entered in an aggregate quantity not to exceed 4,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing in coils; temper rolled; meeting ASTM A1011 DS Type A(modified); whether or not pickled and oiled; with chemical composition (percent by weight): carbon 0.025 to 0.064, manganese 0.175 to 0.274, phosphorus not over 0.017, sulfur not over 0.020, silicon not over 0.024, aluminum 0.025 to 0.060, nitrogen 0.0025 to 0.0050, copper not over 0.040, tin not over 0.010, chromium not over 0.040, nickel not over 0.040, molybdenum not over 0.010, columbium not over 0.005, vanadium not over 0.005, boron not over 0.0005 and titanium not over 0.005; gauge range from 1.37 to 6.38 mm and gauge to one-half or less than tolerance as specified in ASTM 568 and possessing non-earring properties;.

(clxxxiv) Hot-rolled flat-rolled products, designated as N–374 and entered in an aggregate quantity not to exceed 4,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing in coils; temper rolled; meeting ASTM A1011 DS Type B (modified) or ASTM A622 SAE 1006; whether or not pickled and oiled or tension leveled; with chemical composition (percent by weight): carbon 0.030 to 0.060, manganese 0.200 to 0.274, phosphorus not over 0.017, sulfur not over 0.020, silicon not over 0.024, aluminum 0.030 to 0.055, nitrogen not over 0.0030, copper not over 0.040, tin not over 0.010, chromium not over 0.040, nickel not over 0.040, molybdenum not over 0.010, niobium (columbium) not over 0.005, vanadium not over 0.005, boron 0.0015 to 0.0027 and titanium not over 0.005; thickness1.80 mm to 6.27 mm with tolerance of one-half the standard tolerance specified in ASTM A568 and A635;

(clxxxv) High strength low alloy hot-rolled flat-rolled products, designated as N–374 and entered in an aggregate quantity not to exceed 1,500 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing in coils; temper rolled; meeting SAEJ1392 O50; whether or not pickled and oiled or tension leveled; with inclusion shape control via a calcium treatment; with chemical composition (percent by weight): carbon 0.030 to 0.089, manganese 0.190 to 0.309, phosphorus not over 0.020, sulfur not over 0.005, silicon not over 0.030, aluminum 0.010 to 0.060, nitrogen not over 0.0050, copper not over 0.040, tin not over 0.010, chromium not over 0.040, nickel not over 0.040, molybdenum not over 0.010, niobium (columbium) 0.025 to 0.035, vanadium not over 0.005, boron not over 0.0005 and titanium 0.005 to 0.025; with a minimum yield strength of 345 MPa, a minimum tensile strength of 414 MPa and a minimum elongation of 24 percent in 50.8 mm; thickness 1.80 mm to 2.49 mm with tolerance of one half standard gauge tolerance specified in ASTM 568;

(clxxxvi) Hot-rolled flat rolled, continuous cast, designated as N–381 and entered in an aggregate quantity not to exceed 1,310 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing in coils; ultra-clean, with individual particles of non-metallic inclusions not greater than 1 micrometer and clusters or groups of non-metallics not exceeding 5 micrometers in length; with chemical composition (percent by weight): carbon not over 0.08 (except for thickness of 2.06 mm for which carbon requirement is not over 0.064), manganese not over 0.45, phosphorus not over 0.025, sulfur not over 0.020, aluminum 0.025 to 0.065, silicon not over 0.050, chromium not over 0.050, nickel not over 0.050, copper not over 0.050 and molybdenum not over 0.010; surfaces free of digs, scratches, pits, gouges and slivers; with a crown of less than 0.051 mm measured 19.05 mm from the edge of the coil;

(clxxxvii) Hot-rolled flat-rolled products, designated as N–441; the foregoing in coils; with copper 0.22 to 0.30 percent by weight; molybdenum 0.18 to 0.23 percent, by weight; yield strength greater than or equal to 482 N/mm^2; tensile strength 630 N/mm^2 or more; with chemical composition (percent by weight): carbon 0.10 to 0.16, manganese 0.70 to 0.90, phosphorus not over 0.025, sulfur not over 0.002, silicon 0.30 to 0.50, chromium 0.50 to 0.70 and nickel not over 0.20; width not over 1,138 mm; thickness not over 8.89 mm; thickness tolerance according to half of ASTM 568 specification; elongation greater than or equal to 16 percent; hardness of 70 HRB to 105 HRB; pickled and oiled; surface condition free of injurious defects such as holes, breaks, scabs, scale, and embosses; certified that coiled tubing will satisfy fatigue test (SPE papers 22820, 38407, and 54482) constantly.

(clxxxviii) Hot-rolled continuously cast flat-rolled products, designated as X–038, X–030 or X–068 and entered in an aggregate quantity not to exceed 25,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing in coils; manufactured using an electro magnetic brake; ultra-clean, with non-metallic inclusions not greater than 5 microns in length (as measured in the hot-rolled state);.

(clxxxix) Hot-rolled flat-rolled, designated as N–304; the foregoing of a width of 600 mm or more; not clad, plated or coated; thickness over 10 mm; of high-strength steel according to a specification API 5L X–70 with tolerances in the chemistry of carbon ±0.01 percent, manganese ±0.05 percent, silicon ±0.05 percent, vanadium ±0.005 percent, niobium (columbium) ±0.005 percent and calcium 0.0010 to 0.0030 percent;

(cxc) Flat-rolled, thickness over 4.75 mm, designated as N–412; the foregoing for low temperature service; of non-alloy and other alloy steel; certified by the importer as meeting Canadian specification CAN/CSA S473; demonstrating enhanced toughness at low temperature to −50 degrees C by drop-weight testing (ASTM E–208) and Charpy impact testing (ASTM E–23) in the transverse direction; demonstrating enhanced weldability properties in crack tip opening displacement (CTOD) testing of the weld heat affected zone at temperatures below −15 degrees Celsius (CTOD testing according to BS 7448; containing phosphorus less than 0.014 percent by weight and sulfur less than 0.003 percent by weight; as obtained by vacuum degassing or other similar steel making practices, and by the addition of nickel from 0.23 to 1 percent by weight;

(cxci) Stainless steel angles, designated as N–324 or N–353; the foregoing hot-rolled; in sizes of 19.05 mm x 19.05 mm x 3.175 mm; meeting the characteristics described below:

(A) meeting AISI 304 or 304L specifications; or

(B) meeting AISI 316 or 316L specifications;

(cxcii) Improved machining cold-finished bars of stainless steel, designated as N–389 and entered in an aggregate quantity not to exceed 2,000 t

during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing in sizes less than 25.4 mm; sometimes referred to as (but not limited to) products known as ''PRODEC'; containing sulfur (percent by weight) either 0.015 to 0.030 or 0.300 to 0.400; controlled dispersion and morphology of calcium-silicon-aluminum oxides and controlled dispersion of sulfides to avoid formation of stringers, achieved by a controlled melting process in the blowing, ladle, and casting stages; accompanied by mill certificate that V30 testing results in a speed over 250 m/minute;

(cxciii) Improved machining stainless steel wire rod, designated as N–389 and entered in an aggregate quantity not to exceed 500 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing hot-rolled, solution annealed and descaled; measuring not over 25.4 mm; achieved by a melting process characterized by control of blowing, ladle, and casting stages, resulting in sulfur content (percent by weight) from 0.015 to 0.030 or from 0.300 to 0.400; with controlled morphology of calcium-silicon-aluminum oxides and controlled sulfide dispersion to avoid formation of stringers; accompanied by mill certificate that V30 testing results in a speed over 250 m/minute; sometimes referred to as (but not limited to) products known as ''PRODEC'';

(cxciv) Hot-rolled martensitic stainless steel round bars, designated as N–395 and entered in an aggregate quantity not to exceed 50 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing not further worked than cold finished; with chemical composition (percent by weight): carbon 0.80 or more, chromium 16 or more but not over 20 and silicon not over 1; diameter 16 mm or more but not over 32 mm;

(cxcv) Duplex stainless steel bars, designated as X–035; the foregoing annealed; diameter less than 25.4 cm; sometimes referred to as (but not limited to) products known as ''AF 918''; with chemical composition (percent by weight): carbon not over 0.025, chromium 24.0 to 26.0, nickel 6.5 to 8.0, molybdenum 3.0 to 4.0, copper 1.2 to 2.0, tungsten 0.8 to 12.0 and nitrogen 0.23 to 0.33; meeting ASTM A182, ASTM A479, ASTM A789, ASTM A790, API6A and NACE MR0175;

(cxcvi) Stainless steel bars, designated as X–090 and entered in an aggregate quantity not to exceed 5,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing free machining; diameter from 1.5 mm to 125.0 mm in round or hexagonal profile; length ranging from 3.0 m to 5.0 m; microstructure containing complex oxides of lime-silico-aluminate (comprising metallurgical phases anhorthite and/or pseudowollastonite); with calcium content from 30 to 300 ppm and oxygen from 70 to 300 ppm, and with calcium-to-oxygen ratio from 0.2 to 0.6; sometimes referred to as (but not limited to) products known as ''UGIMA';

(cxcvii) Flat-rolled single reduced tin coated steel, designated as N–390 and entered in an aggregate quantity not to exceed 30,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing having a width of 973.1375 mm to 976.3125 mm or 1,108.0750 mm to 1,111.2500 mm; in the following thicknesses: 0.2842 mm to 0.2958 mm (104 pounds/base box), 0.2793 mm to 0.2907 mm (102 pounds/base box), 0.2744 mm to 0.2856 mm (100 pounds/base box) or 0.2695 mm to 0.2805 mm (98 pounds/basebox); 0.15/0.15 to 0.25/0.25 tin coating, Type L, T–3.5 CA, low chrome;

(cxcviii) Tin mill flat-rolled products, designated as N–428 and entered in an aggregate quantity not to exceed 860 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing single reduced, Type MR, 5C Matte Finish; width 1,073.15 mm to 1,149.35 mm; thickness 0.193 mm to 0.252 mm; including T–1 BA, T–3 BA, and T–4 CA; certified by the importer as produced to ASTM A623–00 and A624–98 and as being imported to be slit into two coils of equal widths (with each coil having a width between 533.4 mm and 571.50 mm) for use in the manufacture of engine gaskets;

(cxcix) Products known as tin mill black plate, designated as N–428 and entered in an aggregate quantity not to exceed 760 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing single reduced, Type MR, 5C (Matte) Finish; width 1,085.85 mm to 1,219.20 mm; thickness 0.193 to 0.38 mm, including T–1 BA, T–2 BA and T–4 CA; certified by the importer as produced to ASTM A623–00 and A624–00, for use in the manufacture of engine gaskets, and as being imported to be (i) slit into two coils of equal widths (each coil having a width between 533.4 mm and 571.50 mm) or (ii) slit into two coils, one with a minimum coil width of 541.3375 mm and the other a maximum coil width of 609.60 mm;

(cc) Tin mill flat-rolled products, designated as N–526; the foregoing having a width of 900.1 mm (minus 0, plus 3.175 mm); temper of modified DR550; minimum elongation of 3 percent; continuously annealed; type L chemistry; oiled with acetyl tributyl citrate (ATBC); and either:

(A) electrolytically plated with tin, thickness 0.195 mm to 0.215 mm (tolerance +8/−5 percent), meeting ASTM A623, A623M, A626 or A626M; or

(B) plated with chromium oxides or with chromium and chromium oxides, thickness 0.195 mm (tolerance +8/−5 percent), meeting ASTM A623, A623M, A657 or A657M;

(cci) Hot-rolled flat-rolled high strength low alloy products, designated as X–099; the foregoing in coils; thickness over 3 mm; with inclusion shape control via calcium treatment with carbon; with chemical composition (percent by weight): carbon 0.02 or more but not over 0.12, manganese either (i) 0.20 or more but not over 0.40 or (ii) 0.90 or more but not over 1.90, phosphorus not over 0.02, phosphorus and sulfur combined not over 0.025 and niobium (columbium) or vanadium 0.02 or more (with niobium not over 0.15 and vanadium not over 0.20); with internal inclusion limits in accordance with ASTM E 45, Method A, as follows: Type A—less than or equal to 2.0 thin series, Type B—less than or equal to 2.0 thin series or less than or equal to 1.5 heavy series, Type C—less than or equal to 1.0 thin series or less than or equal to 0.5 heavy series and Type D—less than or equal to 2.0 thin series or less than or equal to 1.0 heavy series;

(ccii) Welded pipes and tubes, designated as N–397; meeting the characteristics described below:

(A) electric fusion welded steel process products; with outside diameter 45.72 cm or more but not over 60.96 cm; with any wall thickness; made to grades ASTM A671, A672 or A691; [add exception?] or

(B) submerged arc welded products; meeting either (I) API pipe specification 2B with an outside diameter of 457.2 mm or greater with the plate meeting API specifications 2H or API 2Y; or (II) ASTM Grade A252 in one of the

following diameters and wall thicknesses: 457.2 mm or more but less than 609.6 mm in outside diameter, with wall thickness of 15.875 mm or more; 609.6 mm or more but less than 762 mm in outside diameter, with wall thickness over 22.225 mm; 762 mm or more but less than 914.4 mm in outside diameter, with wall thickness over 31.75 mm; 914.4 mm or more but less than 1066.8 mm in outside diameter, with wall thickness over 34.925 mm; or 1066.8 or more but not over 1219.2 mm in outside diameter, with wall thickness of 38.1 mm or more;

(cciii) Welded line pipes and tubes, designated as N–485 and entered in an aggregate quantity not to exceed 100,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing certified as being made to API 5L standards with an outside diameter over 60.96 cm; of grade X 70 or higher;

(cciv) Welded drawn over mandrel tubes, designated as X–162; the foregoing measuring 45.00 mm or more but not over 120.00 mm in outside diameter (tolerance of 0.15 mm to 0.40 mm) and 1.50 mm or more but not over 4.00 mm in wall thickness (tolerance of no more than 3.0 percent but at least 0.10 mm); having a partial decarburization of no more than 0.10 mm in depth; certified by the importer as either (I) produced according to DIN 17204 under C2 with narrowed chemical analysis (percent by weight): carbon not over 0.23, manganese not over 0.70, silicon not over 0.25 and aluminum 0.02 or more; or (II) microalloyed steels for cold upsetting: 19Mn5 mod., 26Mn5 mod., 34Mn5 mod., 40Mn5 mod.; imported pursuant to a purchase order from an automotive prop shaft manufacturer in the United States for high quality tubes;

(ccv) Welded drawn over mandrel tubes, designated as X–162; the foregoing measuring 25.00 mm or more but not over 56.00 mm in outside diameter (inside diameter tolerance of not over 0.10 mm) and 1.00 mm or more but not over 3.50 mm in wall thickness (tolerance of not over 3.0 percent but at least 0.10 mm); having a partial decarburization of no more than 0.10 mm in depth; having an inner surface roughness (Rz) of no more than 0.004 mm; certified by the importer as produced according to DIN2393 C under St 34–3, St 37–3, St 44–3, St 52–3 with narrowed chemical analysis (killed by aluminum only): carbon not over 0.24 percent by weight, manganese not over 1.60 percent by weight, silicon not over 0.55 percent by weight and aluminum 0.02 percent or more by weight; imported pursuant to a purchase order from an automotive shock absorber manufacturer in the United States for high quality tubes;

(ccvi) Welded drawn over mandrel tubes, designated as X–162; the foregoing measuring 12.00 mm or more but not over 30.00 mm in outside diameter (inside diameter tolerance 0.05 mm to 0.16 mm) and 1.00 mm or more but not over 3.50 mm in wall thickness (tolerance of not over 0.10 mm); having a partial decarburization of no more than 0.10 mm in depth; having an inner surface roughness (Rz) of not over 0.004 mm; certified by the importer as produced according to DIN 2393 C under St–34–3, St 37–3, St 44–3 and St 52–3 with narrowed chemical analysis (killed by aluminum only): carbon not over 0.24 percent by weight, manganese not over 1.60 percent by weight, silicon not over 0.55 percent by weight, and aluminum 0.02 percent or more by weight; imported pursuant to a purchase order from an automotive or furniture gas spring manufacturer in the United States for high quality tubes.''

(ccvii) ''Electrolytic chromium-coated tin-free products, entered in an aggregate quantity not to exceed 5,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive; the foregoing in DR8 CA; thickness 0.14 mm (50 lbs. per base box) ±5 percent; width 898.53 mm ordered, 904.88 mm actual (tolerances per ASTM A623–90 and ASTM A657–87); with a 7C stone finish; BSO oiling (0.27 ±0.05 GM/BB);'

2. The following new subheadings are inserted in numerical sequence:

	[Goods * * *:]			
''9903.74.30	Enumerated in U.S. note 11(c)(xcii) to this subchapter and entered in an aggregate quantity not to exceed 250,000 t during a time period specified in such note.	No change	No change	No change
9903.74.31 ...	Enumerated in U.S. note 11(c)(xciii) to this subchapter and entered in an aggregate quantity not to exceed 250,000 t during a time period specified in such note.	No change	No change	No change
9903.74.46 ...	Enumerated in U.S. note 11(c)(xci) to this subchapter	No change	No change	No change
9903.74.47 ...	Enumerated in U.S. note 11(c)(cxxiv) to this subchapter	No change	No change	No change
9903.74.48 ...	Enumerated in U.S. note 11(c)(clxxxix) to this subchapter	No change	No change	No change
9903.74.49 ...	Enumerated in U.S. note 11(c)(cxc) to this subchapter	No change	No change	No change
9903.74.82 ...	Enumerated in U.S. note 11(c)(xc) to this subchapter	No change	No change	No change
9903.74.83 ...	Enumerated in U.S. note 11(c)(cix) to this subchapter	No change	No change	No change
9903.74.84 ...	Enumerated in U.S. note 11(c)(cx) to this subchapter	No change	No change	No change
9903.74.85 ...	Enumerated in U.S. note 11(c)(cxi) to this subchapter and entered in an aggregate quantity not to exceed 7,000 t during a time period specified in such note.	No change	No change	No change
9903.74.86 ...	Enumerated in U.S. note 11(c)(cxii) to this subchapter	No change	No change	No change
9903.74.87 ...	Enumerated in U.S. note 11(c)(cxiii) to this subchapter	No change	No change	No change
9903.74.88 ...	Enumerated in U.S. note 11(c)(cxiv) to this subchapter	No change	No change	No change
9903.74.89 ...	Enumerated in U.S. note 11(c)(cxv) to this subchapter and entered in an aggregate quantity not to exceed 20,000 t during a time period specified in such note.	No change	No change	No change
9903.74.90 ...	Enumerated in U.S. note 11(c)(cxvi) to this subchapter and entered in an aggregate quantity not to exceed 10,500 t during a time period specified in such note.	No change	No change	No change
9903.74.91 ...	Enumerated in U.S. note 11(c)(cxvii) to this subchapter and entered in an aggregate quantity not to exceed 5,300 t during a time period specified in such note.	No change	No change	No change
9903.74.92 ...	Enumerated in U.S. note 11(c)(cxviii) to this subchapter.	No change	No change	No change
9903.74.93 ...	Enumerated in U.S. note 11(c)(cxix) to this subchapter	No change	No change	No change
9903.74.94 ...	Enumerated in U.S. note 11(c)(cxxxviii) to this subchapter	No change	No change	No change

9903.74.95 ...	Enumerated in U.S. note 11(c)(cxxxix) to this subchapter	No change	No change	No change
9903.74.96 ...	Enumerated in U.S. note 11(c)(clxxiv) to this subchapter and entered in an aggregate quantity not to exceed 10,000 t during a time period specified in such note.	No change	No change	No change
9903.74.97 ...	Enumerated in U.S. note 11(c)(clxxv) to this subchapter	No change	No change	No change
9903.74.98 ...	Enumerated in U.S. note 11(c)(clxxvi) to this subchapter	No change	No change	No change
9903.74.99 ...	Enumerated in U.S. note 11(c)(clxxvii) to this subchapter and entered in an aggregate quantity not to exceed 500 t during a time period specified in such note.	No change	No change	No change
9903.75.00 ...	Enumerated in U.S. note 11(c)(clxxviii) to this subchapter and entered in an aggregate quantity not to exceed 1,000 t during a time period specified in such note.	No change	No change	No change
9903.75.01 ...	Enumerated in U.S. note 11(c)(clxxix) to this subchapter and entered in an aggregate quantity not to exceed 10,000 t during a time period specified in such note.	No change	No change	No change
9903.75.02 ...	Enumerated in U.S. note 11(c)(clxxx) to this subchapter.	No change	No change	No change
9903.75.03 ...	Enumerated in U.S. note 11(c)(clxxxi) to this subchapter	No change	No change	No change
9903.75.04 ...	Enumerated in U.S. note 11(c)(clxxxii) to this subchapter.	No change	No change	No change
9903.75.05 ...	Enumerated in U.S. note 11(c)(clxxxiii) to this subchap-ter and entered in an aggregate quantity not to exceed 4,000 t during a time period specified in such note.	No change	No change	No change
9903.75.06 ...	Enumerated in U.S. note 11(c)(clxxxiv) to this subchapter and entered in an aggregate quantity not to exceed 4,000 t during a time period specified in such note.	No change	No change	No change
9903.75.07 ...	Enumerated in U.S. note 11(c)(clxxxv) to this subchapter and entered in an aggregate quantity not to exceed 1,500 t during a time period specified in such note.	No change	No change	No change
9903.75.08 ...	Enumerated in U.S. note 11(c)(clxxxvi) to this subchapter and entered in an aggregate quantity not to exceed 1,310 t during a time period specified in such note.	No change	No change	No change
9903.75.09 ...	Enumerated in U.S. note 11(c)(clxxxvii) to this subchapter	No change	No change	No change
9903.75.10 ...	Enumerated in U.S. note 11(c)(clxxxviii) to this subchapter and entered in an aggregate quantity not to exceed 25,000 t during a time period specified in such note.	No change	No change	No change
9903.75.11 ...	Enumerated in U.S. note 11(c)(cxl) to this subchapter	No change	No change	No change
9903.75.12 ...	Enumerated in U.S. note 11(c)(cci) to this subchapter	No change	No change	No change
9903.75.36 ...	Enumerated in U.S. note 11(c)(lxxxiii) to this subchapter	No change	No change	No change
9903.75.37 ...	Enumerated in U.S. note 11(c)(lxxxiv) to this subchapter	No change	No change	No change
9903.75.38 ...	Enumerated in U.S. note 11(c)(lxxxv) to this subchapter	No change	No change	No change
9903.75.39 ...	Enumerated in U.S. note 11(c)(xcvii) to this subchapter	No change	No change	No change
9903.75.40 ...	Enumerated in U.S. note 11(c)(xcviii) to this subchapter	No change	No change	No change
9903.75.41 ...	Enumerated in U.S. note 11(c)(xcix) to this subchapter	No change	No change	No change
9903.75.42 ...	Enumerated in U.S. note 11(c)(c) to this subchapter	No change	No change	No change
9903.75.43 ...	Enumerated in U.S. note 11(c)(ci) to this subchapter	No change	No change	No change
9903.75.44 ...	Enumerated in U.S. note 11(c)(cii) to this subchapter	No change	No change	No change
9903.75.45 ...	Enumerated in U.S. note 11(c)(cxxviii) to this subchapter	No change	No change	No change
9903.75.46 ...	Enumerated in U.S. note 11(c)(cxxix) to this subchapter	No change	No change	No change
9903.75.47 ...	Enumerated in U.S. note 11(c)(cxxx) to this subchapter	No change	No change	No change
9903.75.48 ...	Enumerated in U.S. note 11(c)(cxxxi) to this subchapter	No change	No change	No change
9903.75.49 ...	Enumerated in U.S. note 11(c)(cxxxii) to this subchapter	No change	No change	No change
9903.75.50 ...	Enumerated in U.S. note 11(c)(clvii) to this subchapter and entered in an aggregate quantity not to exceed 15,000 t during a time period specified in such note.	No change	No change	No change
9903.75.51 ...	Enumerated in U.S. note 11(c)(clviii) to this subchapter	No change	No change	No change
9903.75.52 ...	Enumerated in U.S. note 11(c)(clix) to this subchapter and entered in an aggregate quantity not to exceed 10,000 t during a time period specified in such note.	No change	No change	No change
9903.75.53 ...	Enumerated in U.S. note 11(c)(clx) to this subchapter	No change	No change	No change
9903.75.54 ...	Enumerated in U.S. note 11(c)(clxi) to this subchapter and entered in an aggregate quantity not to exceed 20,000 t during a time period specified in such note.	No change	No change	No change
9903.75.55 ...	Enumerated in U.S. note 11(c)(clxii) to this subchapter and entered in an aggregate quantity not to exceed 15,000 t during a time period specified in such note.	No change	No change	No change
9903.75.56 ...	Enumerated in U.S. note 11(c)(clxiii) to this subchapter	No change	No change	No change
9903.75.57 ...	Enumerated in U.S. note 11(c)(clxiv) to this subchapter	No change	No change	No change
9903.75.58 ...	Enumerated in U.S. note 11(c)(clxv) to this subchapter and entered in an aggregate quantity not to exceed 86 t during a time period specified in such note.	No change	No change	No change
9903.75.59 ...	Enumerated in U.S. note 11(c)(clxvi) to this subchapter	No change	No change	No change
9903.76.09 ...	Enumerated in U.S. note 11(c)(ciii) to this subchapter	No change	No change	No change
9903.76.10 ...	Enumerated in U.S. note 11(c)(cv) to this subchapter and entered in an aggregate quantity not to exceed 3,000 t during a time period specified in such note.	No change	No change	No change
9903.76.11 ...	Enumerated in U.S. note 11(c)(cxxxiii) to this subchapter	No change	No change	No change
9903.76.12 ...	Enumerated in U.S. note 11(c)(cxxxiv) to this subchapter	No change	No change	No change
9903.76.13 ...	Enumerated in U.S. note 11(c)(clii) to this subchapter	No change	No change	No change

9903.76.14 ...	Enumerated in U.S. note 11(c)(clxvii) to this subchapter and entered in an aggregate quantity not to exceed 80,000 t during a time period specified in such note.	No change	No change	No change
9903.76.15 ...	Enumerated in U.S. note 11(c)(clxviii) to this subchapter and entered in an aggregate quantity not to exceed 9,550 t during a time period specified in such note.	No change	No change	No change
9903.76.16 ...	Enumerated in U.S. note 11(c)(clxix) to this subchapter and entered in an aggregate quantity not to exceed 4,000 t during a time period specified in such note.	No change	No change	No change
9903.76.17 ...	Enumerated in U.S. note 11(c)(clxx) to this subchapter	No change	No change	No change
9903.76.18 ...	Enumerated in U.S. note 11(c)(clxxi) to this subchapter	No change	No change	No change
9903.76.19 ...	Enumerated in U.S. note 11(c)(clxxii) to this subchapter	No change	No change	No change
9903.76.20 ...	Enumerated in U.S. note 11(c)(clxxiii) to this subchapter	No change	No change	No change
9903.76.31 ...	Enumerated in U.S. note 11(c)(cxliii) to this subchapter	No change	No change	No change
9903.76.32 ...	Enumerated in U.S. note 11(c)(cxcvii) to this subchapter and entered in an aggregate quantity not to exceed 30,000 t during a time period specified in such note.	No change	No change	No change
9903.76.33 ...	Enumerated in U.S. note 11(c)(cxcviii) to this subchapter and entered in an aggregate quantity not to exceed 860 t during a time period specified in such note.	No change	No change	No change
9903.76.34 ...	Enumerated in U.S. note 11(c)(cxcix) to this subchapter and entered in an aggregate quantity not to exceed 760 t during a time period specified in such note.	No change	No change	No change
9903.76.35 ...	Enumerated in U.S. note 11(c)(cc) to this subchapter	No change	No change	No change
9903.76.62 ...	Enumerated in U.S. note 11(c)(lxxxvi) to this subchapter	No change	No change	No change
9903.76.63 ...	Enumerated in U.S. note 11(c)(lxxxvii) to this subchapter	No change	No change	No change
9903.76.64 ...	Enumerated in U.S. note 11(c)(lxxxviii) to this subchapter	No change	No change	No change
9903.76.65 ...	Enumerated in U.S. note 11(c)(lxxxix) to this subchapter	No change	No change	No change
9903.76.66 ...	Enumerated in U.S. note 11(c)(cv) to this subchapter	No change	No change	No change
9903.76.67 ...	Enumerated in U.S. note 11(c)(cvi) to this subchapter and entered in an aggregate quantity not to exceed 5 t during a time period specified in such note.	No change	No change	No change
9903.76.68 ...	Enumerated in U.S. note 11(c)(cvii) to this subchapter and entered in an aggregate quantity not to exceed 15,000 t during a time period specified in such note.	No change	No change	No change
9903.76.69 ...	Enumerated in U.S. note 11(c)(cviii) to this subchapter	No change	No change	No change
9903.76.70 ...	Enumerated in U.S. note 11(c)(cxxiv) to this subchapter	No change	No change	No change
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9903.76.72 ...	Enumerated in U.S. note 11(c)(cxxxvi) to this subchapter	No change	No change	No change
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9903.76.74 ...	Enumerated in U.S. note 11(c)(cxlvi) to this subchapter	No change	No change	No change
9903.76.75 ...	Enumerated in U.S. note 11(c)(cxlvii) to this subchapter and entered in an aggregate quantity not to exceed 100 t during a time period specified in such note.	No change	No change	No change
9903.76.76 ...	Enumerated in U.S. note 11(c)(cxlviii) to this subchapter	No change	No change	No change
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9903.76.94 ...	Enumerated in U.S. note 11(c)(xcv) to this subchapter and entered in an aggregate quantity not to exceed 1,472 t during a time period specified in such note.	No change	No change	No change
9903.76.95 ...	Enumerated in U.S. note 11(c)(xcvi) to this subchapter	No change	No change	No change
9903.76.96 ...	Enumerated in U.S. note 11(c)(cxxiv) to this subchapter	No change	No change	No change
9903.76.97 ...	Enumerated in U.S. note 11(c)(cxxv) to this subchapter	No change	No change	No change
9903.76.98 ...	Enumerated in U.S. note 11(c)(cxxvi) to this subchapter	No change	No change	No change
9903.76.99 ...	Enumerated in U.S. note 11(c)(cxxvii) to this subchapter	No change	No change	No change
9903.77.00 ...	Enumerated in U.S. note 11(c)(cxxiii) to this subchapter	No change	No change	No change
9903.77.01 ...	Enumerated in U.S. note 11(c)(clvi) to this subchapter	No change	No change	No change
9903.77.34 ...	Enumerated in U.S. note 11(c)(xciv) to this subchapter	No change	No change	No change
9903.77.35 ...	Enumerated in U.S. note 11(c)(cxxii) to this subchapter	No change	No change	No change
9903.77.36 ...	Enumerated in U.S. note 11(c)(cxliv) to this subchapter and entered in an aggregate quantity not to exceed 5 t during a time period specified in such note.	No change	No change	No change
9903.77.37 ...	Enumerated in U.S. note 11(c)(cxlv) to this subchapter	No change	No change	No change
9903.77.38 ...	Enumerated in U.S. note 11(c)(ccii) to this subchapter	No change	No change	No change
9903.77.39 ...	Enumerated in U.S. note 11(c)(cciii) to this subchapter and entered in an aggregate quantity not to exceed 100,000 t during a time period specified in such note.	No change	No change	No change
9903.77.40 ...	Enumerated in U.S. note 11(c)(cciv) to this subchapter	No change	No change	No change
9903.77.41 ...	Enumerated in U.S. note 11(c)(ccv) to this subchapter	No change	No change	No change
9903.77.42 ...	Enumerated in U.S. note 11(c)(ccvi) to this subchapter	No change	No change	No change
9903.77.50 ...	Enumerated in U.S. note 11(c)(clv) to this subchapter	No change	No change	No change
9903.77.68 ...	Enumerated in U.S. note 11(c)(cxx) to this subchapter	No change	No change	No change
9903.77.69 ...	Enumerated in U.S. note 11(c)(cxxi) to this subchapter	No change	No change	No change
9903.77.70 ...	Enumerated in U.S. note 11(c)(cxli) to this subchapter	No change	No change	No change

9903.77.71 ...	Enumerated in U.S. note 11(c)(cliv) to this subchapter	No change	No change	No change
9903.77.72 ...	Enumerated in U.S. note 11(c)(cxci) to this subchapter	No change	No change	No change
9903.77.73 ...	Enumerated in U.S. note 11(c)(cxcii) to this subchapter and entered in an aggregate quantity not to exceed 2,000 t during a time period specified in such note.	No change	No change	No change
9903.77.74 ...	Enumerated in U.S. note 11(c)(cxciv) to this subchapter and entered in an aggregate quantity not to exceed 50 t during a time period specified in such note.	No change	No change	No change
9903.77.75 ...	Enumerated in U.S. note 11(c)(cxcv) to this subchapter	No change	No change	No change
9903.77.76 ...	Enumerated in U.S. note 11(c)(cxcvi) to this subchapter and entered in an aggregate quantity not to exceed 5,000 t during a time period specified in such note.	No change	No change	No change
9903.77.86 ...	Enumerated in U.S. note 11(c)(cxciii) to this subchapter and entered in an aggregate quantity not to exceed 500 t during a time period specified in such note.	No change	No change	No change
9903.78.14 ...	Enumerated in U.S. note 11(c)(cxlii) to this subchapter	No change	No change	No change
9903.77.86 ...	Enumerated in U.S. note 11(c)(ccvii) to this subchapter and entered in an aggregate quantity not to exceed 5,000 t during a time period specified in such note.	No change	No change	No change

Conforming changes

Subheading 9903.72.34 is modified by inserting at the end thereof ‘‘, as described in subheadings 9903.74.30 through 9903.74.31’’.

Subheading 9903.72.57 is modified by deleting ‘‘9903.74.45’’ and by inserting in lieu thereof ‘‘9903.74.47’’.

Subheading 9903.72.78 is modified by deleting ‘‘9903.74.81’’ and by inserting in lieu thereof ‘‘9903.75.11’’.

Subheading 9903.73.01 is modified by deleting ‘‘9903.75.32’’ and by inserting in lieu thereof ‘‘9903.75.59’’.

Subheading 9903.73.18 is modified by deleting ‘‘9903.76.08’’ and by inserting in lieu thereof ‘‘9903.76.20’’.

Subheading 9903.73.35 is modified by deleting ‘‘9903.76.29’’ and by inserting in lieu thereof ‘‘9903.76.36’’.

Subheading 9903.73.48 is modified by deleting ‘‘9903.76.61’’ and by inserting in lieu thereof ‘‘9903.76.80’’.

Subheading 9903.73.55 is modified by deleting ‘‘9903.76.90’’ and by inserting in lieu thereof ‘‘9903.77.01’’.

Subheading 9903.73.82 is modified by deleting ‘‘9903.77.33’’ and by inserting in lieu thereof ‘‘9903.77.42’’.

Subheading 9903.73.88 is modified by inserting at the end thereof ‘‘, as described in subheading 9903.77.50’’.

Subheading 9903.74.01 is modified by deleting ‘‘9903.77.67’’ and by inserting in lieu thereof ‘‘9903.77.76’’.

Subheading 9903.74.12 is modified by deleting ‘‘subheading 9903.77.85’’ and by inserting in lieu thereof ‘‘subheadings 9903.77.85 through 9903.77.86’’.

Subheading 9903.74.18 is modified by deleting ‘‘9903.78.13’’ and by inserting in lieu thereof ‘‘9903.78.14’’.

[FR Doc. 02–22336 Filed 8–29–02; 8:45 am]

BILLING CODE 3190–01–P

Federal Register

Friday,
August 30, 2002

Part X

The President

Proclamation 7585—To Implement an Agreement Regarding Imports of Line Pipe Under Section 203 of the Trade Act of 1974

Federal Register
Vol. 67, No. 169
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Presidential Documents

Title 3—

The President

Proclamation 7585 of August 28, 2002

To Implement an Agreement Regarding Imports of Line Pipe Under Section 203 of the Trade Act of 1974

By the President of the United States of America

A Proclamation

1. On February 18, 2000, pursuant to section 203 of the Trade Act of 1974, as amended (the ''Trade Act'') (19 U.S.C. 2253), the President issued Proclamation 7274, which imposed additional duties on certain circular welded carbon quality line pipe (line pipe) provided for in subheadings 7306.10.10 and 7306.10.50 of the Harmonized Tariff Schedule of the United States (HTS) (safeguard measure) for a period of 3 years plus 1 day, with the first 9000 short tons of imports that are the product of each supplying country excluded from the increased duty during each year, and with annual reductions in the rate of duty in the second and third years.

2. Section 203(a)(3)(E) of the Trade Act (19 U.S.C. 2253(a)(3)(E)) authorizes the President to negotiate, conclude, and carry out agreements with foreign countries limiting the export from foreign countries and the import into the United States of an imported article with regard to which the U.S. International Trade Commission has made an affirmative finding regarding serious injury, or the threat thereof. Section 203(f)(1) of the Trade Act (19 U.S.C. 2253(f)(1)) authorizes the President, if action under section 203 takes effect with regard to an imported article, to negotiate agreements of the type described in subsection (a)(3)(E) and, after such agreements take effect, suspend or terminate, in whole or in part, any action previously taken.

3. The United States Trade Representative, pursuant to sections 141(c)(1)(C) and 203(f)(1) of the Trade Act (19 U.S.C. 2171(c)(1)(C) and 2253(f)(1)), negotiated an agreement with the Republic of Korea (Agreement) limiting the export from Korea and import into the United States of line pipe through the imposition of a tariff-rate quota, to take effect on September 1, 2002. The agreement was signed on July 29, 2002.

4. Pursuant to sections 203(a)(3)(E) and 203(f) of the Trade Act (19 U.S.C. 2253(a)(3)(E) and 2253(f)), I am replacing the additional duties and 9000 short ton exclusion applicable to imports of line pipe from Korea with a tariff-rate quota, on a quarterly basis, to take effect beginning on September 1, 2002.

5. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

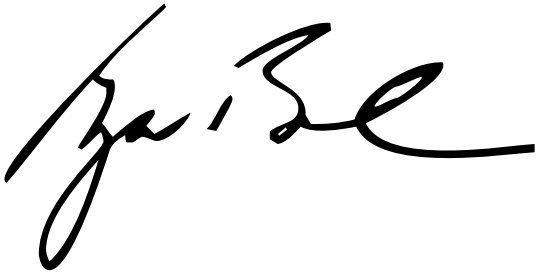
NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 203 and 604 of the Trade Act, do proclaim that:

(1) In order to establish a tariff-rate quota to carry out the Agreement, subchapter III of chapter 99 of the HTS is modified as provided in the Annex to this proclamation.

(2) Any provision of previous proclamations and Executive Orders that is inconsistent with the actions taken in this proclamation is superseded to the extent of the inconsistency.

(3) The modifications to the HTS made by this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time, on September 1, 2002, and shall continue in effect as provided in subchapter III of chapter 99 of the HTS, unless such actions are earlier expressly modified or terminated. Effective at the close of March 1, 2004, or such other date that is 1 year from the close of the safeguard measure, the modifications to the HTS established in this proclamation and by Proclamation 7274 shall be deleted from the HTS.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of August, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



Billing code 3195–01–P

ANNEX

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after September 1, 2002, and prior to the close of March 1, 2003, the Harmonized Tariff Schedule of the United States (HTS) is modified as set forth herein, with the material in the new tariff provisions being inserted in the columns labeled "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

1. The superior text to subheadings 9903.72.20 through 9903.72.25 is modified by deleting "of Canada or of Mexico" and by inserting in lieu thereof "of Canada, of Mexico or of any country enumerated in note 10 to this subchapter".

2. Subheadings 9903.72.24 and 9903.72.25 are deleted and the following new material is inserted in lieu thereof:

	[Welded...]			
	[If...]			
	"Articles the product of Korea:			
9903.73.24	If entered during the period March 1, 2002, through August 31, 2002, in an aggregate quantity not in excess of 8,164,663 kg, after which no such goods the product of such country may be entered during the remainder of such period under this subheading.....	No change	No change	No change
9903.73.25	If entered during the period September 1, 2002, through November 30, 2002, inclusive, in an aggregate quantity not in excess of 31,751,733 kg, after which no such goods the product of such country may be entered during the remainder of such period under this subheading.....	No change	No change	No change
9903.73.26	If entered during the period December 1, 2002, through March 1, 2003, inclusive, in an aggregate quantity not in excess of 31,751,733 kg plus any remaining quantity from the quantity specified in subheading 9903.73.25 after the total quantities entered under such subheading are subtracted therefrom, after which no such goods the product of such country may be entered during the remainder of such period under this subheading.....	No change	No change	No change
9903.73.27	Other.....	The rate provided in the Rates of Duty 1 General subcolumn for the applicable subheading (7306.10.10 or 7306.10.50) + 11%		No change

	[Welded...]			
	[If...]			
	Other:			
9903.73.28	In aggregate quantities from each other supplying country not in excess of 8,164,663 kg, the foregoing the product of such country	No change	No change	No change
9903.73.29	Other	The rate provided in the Rates of Duty 1 General subcolumn for the applicable subheading (7306.10.10 or 7306.10.50) + 11%		The rate provided in Rates of Duty 2 column for the applicable subheading (7306.10.10 or 7306.10.50) + 21%"

[FR Doc. 02–22502
Filed 8–29–02; 11:34 am]
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Banks, savings associations, and credit unions; customer identification programs;

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Broker-dealers; customer identification programs; comments due by 9-6-02; published 7-23-02 [FR 02-18192]

Futures commission merchants and introducing brokers; customer identification programs; comments due by 9-6-02; published 7-23-02 [FR 02-18195]

Mutual funds; customer identification programs; comments due by 9-6-02; published 7-23-02 [FR 02-18194]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 223/P.L. 107–211

To amend the Clear Creek County, Colorado, Public Lands Transfer Act of 1993 to provide additional time for Clear Creek County to dispose of certain lands transferred to the county under the Act. (Aug. 21, 2002; 116 Stat. 1050)

H.R. 309/P.L. 107–212

Guam Foreign Investment Equity Act (Aug. 21, 2002; 116 Stat. 1051)

H.R. 601/P.L. 107–213

To redesignate certain lands within the Craters of the Moon National Monument, and for other purposes. (Aug. 21, 2002; 116 Stat. 1052)

H.R. 1384/P.L. 107–214

Long Walk National Historic Trail Study Act (Aug. 21, 2002; 116 Stat. 1053)

H.R. 1456/P.L. 107–215

Booker T. Washington National Monument Boundary Adjustment Act of 2002 (Aug. 21, 2002; 116 Stat. 1054)

H.R. 1576/P.L. 107–216

James Peak Wilderness and Protection Area Act (Aug. 21, 2002; 116 Stat. 1055)

H.R. 2068/P.L. 107–217

To revise, codify, and enact without substantive change

certain general and permanent laws, related to public buildings, property, and works, as title 40, United States Code, ''Public Buildings, Property, and Works''. (Aug. 21, 2002; 116 Stat. 1062)

H.R. 2234/P.L. 107–218

Tumacacori National Historical Park Boundary Revision Act of 2002 (Aug. 21, 2002; 116 Stat. 1328)

H.R. 2440/P.L. 107–219

To rename Wolf Trap Farm Park as ''Wolf Trap National Park for the Performing Arts'', and for other purposes. (Aug. 21, 2002; 116 Stat. 1330)

H.R. 2441/P.L. 107–220

To amend the Public Health Service Act to redesignate a facility as the National Hansen's Disease Programs Center, and for other purposes. (Aug. 21, 2002; 116 Stat. 1332)

H.R. 2643/P.L. 107–221

Fort Clatsop National Memorial Expansion Act of 2002 (Aug. 21, 2002; 116 Stat. 1333)

H.R. 3343/P.L. 107–222

To amend title X of the Energy Policy Act of 1992, and for other purposes. (Aug. 21, 2002; 116 Stat. 1336)

H.R. 3380/P.L. 107–223

23 To authorize the Secretary of the Interior to issue right-of-way permits for natural gas pipelines within the boundary of Great Smoky Mountains National Park. (Aug. 21, 2002; 116 Stat. 1338)

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